TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 36

J. E. PIERCE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 11, 1941.

CERTIORARI GRANTED APRIL 14, 1941.

No. 8352

United States Circuit Court of Appeals, Sixth Circuit

J. E. PIERCE, - - - - - - Appellant

versus

UNITED STATES OF AMERICA - Appellee

Appeal from the District Court of the United States for the Western District of Tennessee.

TRANSCRIPT OF RECORD

INDEX

	PAGE
Indictment	1
Order: Verdict of Jury and Sentence	11, 14
Notice of Appeal	14, 23
Bill of Exceptions	24

GOVERNMENT'S PROOF

	Direct.	Cross.	Redirect.	Recross
Tom Anderson	24	27	36	36
J. H. Hill	37	37		
Reau Graves	37	39	43	
Joe Luckey	43	46	51	52
Cale H. Witt	52	54		
Harris Utley	59	62		
Joe Luckey (recalled)				65
Frank Blackman	66	69		
J. H. Simpson	73	76		
J. T. Mathis	80	82		
Carl Robinson	84	86	88	
William J. Hayes	89	90	91	91
J. B. Cherry	91	95	101	
M. R. Lewis	102	103		
Clarence Luckey	108	110	112	
T. L. Lewis	112	114		
W. R. Couch	116	117		
Dr. D. J. Conyers	120	123	131	
Claud Shoaf	131	133		

DEFENDANT'S PROOF

	Direct.	Cross.	Redirect.	Recross
J. E. Pierce	135	171	196	202
Walter Brock	206			
J. C. Hamlett	207	208, 215		
V. W. Bringle	209	211	214	215
R. E. Ross	215	216		
Ernest N. Drake	217	218		
Artie B. Dancer	222	222	223	
J. C. Ray	223	224		
W. A. Penner	226	230		
Ernest Parker	233	234		
Ernest Caldwell	235	235		
J. H. Caughlin	235	238	243	244
C. E. Garner	244	245	249	249
E. C. Harrell	250	252	256	
Rice T. Fant	256			
Dewey Claunch	257	257	257	257
E. H. Roach	258	264	283	284

Medina Impeachment Testimony 285, 289
Motion for Directed Verdict: Overruled 291, 293
Charge of Court 294, 308
Defendent's Special Request No. 1, Refused 308
Exhibits 308, 309
Stipulation as to Exhibits 310
Bill of Exceptions Signed 311
Motion for New Trial 312
Affidavit J. E. Pierce 316
Exhibits to Motion for New Trial 317, 330
Order Overruling Motion for New Trial 330
Assignments of Error 331
Order Extending Time to File Bill of Exceptions and Assignments of Error 342
Praecipe 343
Amended Praecipe 343
Clerk's Certificate 344

	Original	Print
Proceedings in U. S. C. C. A., Sixth Circuit	345	345
Minute entry of argument and submission (omitted in printing)	345	345
Judgment	345	345
Opinion, Arant, J.	347	345
Petition for rehearing (omitted in printing)	351	
Order denying petition for rehearing	368	349
Clerk's certificate (omitted in printing)	369	
Order allowing certiorari	370	349

IN THE

DISTRICT COURT OF THE UNITED STATES

WITHIN AND FOR THE WESTERN DISTRICT OF TENNESSEE
IN THE SIXTH JUDICIAL CIRCUIT OF THE
UNITED STATES

OF THE SEPTEMBER TERM,
1935

United States of America, Complainant, vs. J. E. Pierce and E. H. Roach, Defendants.	Sections 88 and 76, Title 18, U. S. C. A.

INDICTMENT
(Courts Submitted to Jury)

COUNT II.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them did, on or about the 21st day of May, 1935, and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to-wit, Cale H. Witt, falsely assume and pretend to be officers of the United States, to-wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H.

Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT IV.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 21st day of May, 1935 and heretofore before the finding of this indictment in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to wit, Harris H. Utley, falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Indictment

COUNT V.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did on or about the 21st day of May, 1935 and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, Harris H. Utley, a sum of money, to wit, $10.00, and the said J. E. Pierce and E. H. Roach, and each of them then and there pretending to the said Harris H. Utley that they were officers of the United States, to wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there well knew, they were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof to represent themselves as such or to obtain from the said Harris H. Utley the said sum of money, to wit: $10.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

IX.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 21st day of May 1935, and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to wit. Clarence E. Luckey, falsely assume and pretend to be offi-

cers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT X.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 21st day of May, 1935, and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, Clarence E. Luckey, a sum of money, to wit, $10.00, and the said J. E. Pierce and E. H. Roach and each of them, then and there pretending to the said Clarence E. Luckey that they were officers of the United States, to wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there well knew, they were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to represent themselves as such, or to obtain from the said Clarence E. Luckey the said sum of money, to wit, $10.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Indictment

COUNT XI.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 21st day of May, 1935, and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to wit, J. H. Simpson, falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said, J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT XII.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 21st day of May, 1935, and heretofore before the findings of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, J. H. Simpson, a sum of money, to wit, $10.00, and the said J. E. Pierce

and E. H. Roach, and each of them, then and there pretending to the said J. H. Simpson that they were officers of the United States, to wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there well knew, they were not acting under the authority of the United States or any department thereof, and were not authorized by the United States, or any department thereof, to represent themselves as such or to obtain from the said J. H. Simpson the said sum of money, to wit, $10.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT XIV.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 22nd day of May, 1935, and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to wit, Frank Blackman, falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United states and contrary to the form of the statute of the same in such case made and provided.

Indictment

COUNT XV.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 22nd day of May, and heretofore before the finding of this indictment, in Gibson County, Tennessee, in the Eastern Division of the Western District of Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, Frank Blackman, a sum of money, to wit, 20.00, and the said J. E. Pierce and E. H. Roach, and each of them, then and there pretending to the said Frank Blackman that they were officers of the United States, to wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there well knew, they were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to represent themselves as such, or to obtain from the said Frank Blackman the said sum of money, to wit, $20.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT XVI.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did on or about the 11th day of June, 1935, and heretofore before the finding of this indictment, in the Eastern Division of the Western District of Tennessee, in Crockett County, Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to wit: Dr. D. J. Conyers, falsely

assume and pretend to be officers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

XVII.

And the grand jurors aforesaid, upon the oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did on or about the 11th day of June, 1935, and heretofore before the finding of this indictment, in the Eastern Division of the Western District of Tennessee, in Crockett County, Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, Dr. D. J. Conyers, a sum of money, to wit: $25.00, and the said J. E. Pierce and E. H. Roach, and each of them, then and there pretending to the said Dr. D. J. Conyers that they were officers of the United States, to-wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there well knew, they were not acting under the authority of the United States, or any department thereof, to represent themselves as such, or to obtain from the said Dr. D. J. Conyers the said sum of money, to wit, $25.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Indictment

XVIII.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 11 day of June, 1935, and heretofore before the finding of this indictment, in the Eastern Division of the Western District of Tennessee, in Crockett County, Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously; and with intent to defraud a certain person, to wit, Carl Robertson, falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT XIX.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 11 day of June, 1935, and heretofore before the finding of this indictment, in the Eastern Division of the Western District of Tennessee, in Crockett County, Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, Carl Robert-

son, a sum of money, to wit, $20.00, and the said J. E. Pierce and E. H. Roach, and each of them, then and there pretending to the said Carl Robertson that they were officers of the United States, to wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them well knew, they were not acting under the authority of the United States, or any department thereof, to represent themselves as such, or to obtain from the said Carl Robertson the said sum of money, to wit, $20.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

COUNT XX.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 11 day of June, 1935, and heretofore before the finding of this indictment, in the Eastern Division of the Western District of Tennessee, in Crockett County, Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud a certain person, to wit, J. B. Cherry, falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling T. V. A. Units, and each and both of them, the said J. E. Pierce and E. H. Roach, did then and there take upon themselves to act as such officers, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there knew, they were not officers or employees of the United States, and were not acting under the authority of the United States, or any department thereof, and were not authorized by the United States, or any department thereof, to take upon themselves to act as such officers or employees of the United States; against the peace and dignity of the United States and contrary to the form of the statutes of the same in such case made and provided.

Indictment

COUNT XXI.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That J. E. Pierce and E. H. Roach, whose names are otherwise to the grand jurors unknown, and each of them, did, on or about the 11th day of June, 1935, and heretofore before the finding of this indictment, in the Eastern Division of the Western District of Tennessee, in Crockett County, Tennessee, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously, and with intent to defraud, obtain from a certain person, to wit, J. B. Cherry, a sum of money, to wit, $20.00, and the said J. E. Pierce and E. H. Roach, and each of them, then and there pretending to the said J. B. Cherry that they were officers of the United States, to wit, representatives of the Government selling T. V. A. Units, when in truth and in fact, as each and both of them, the said J. E. Pierce and E. H. Roach, then and there well knew, they were not acting under the authority of the United States, or any department thereof, to represent themselves as such, or to obtain from the said J. B. Cherry the said sum of money, to wit, $20.00; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

William McClanahan,
United States Attorney,
Western District of Tennessee.

ORDER: JURY TRIAL: VERDICT OF GUILTY AND SENTENCE.

Entered May 16th, 1939. John D. Martin, Judge

This cause came on to be heard on the 8th day of May, 1939, upon the counts of the indictment herein pending against the defendant, J. E. Pierce, to wit: Counts 2, 3, 4, 5, 9,

10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 21, and the said defendant's plea of not guilty thereto; being present, the United States Attorney of the district, in behalf of the United States, and the said defendant, J. E. Pierce, accompanied by his attorneys, William H. Pierce and L. E. Gwinn: The respective parties having announced ready to proceed with the trial, the court ordered a jury to come, and thereupon came a jury of good and lawful men, to wit: Willie Wheatley, Will Thompson, Oscar Walk, Lib Tidwell, C. W. Hill, E. M. McBride, F. W. Beecroft, C. E. Teague, Lee Joyner, J. W. Stroud, Carter W. Leggett, and M. A. McMahan, who being duly elected, impaneled, tried and sworn well and truly to try the issues herein joined and of the defendant a good deliverance make and a true verdict render according to the law and the evidence;

The Government thereupon introduced its proof, and during the progress thereof, on the 9th day of May, 1939, on motion of the United States Attorney Count 3 of the indictment was dismissed. The Government thereupon, on said 9th day of May, 1939, at 3:00 o'clock p. m., having concluded its proof, rested its case.

The defendant thereupon introduced his proof, and took the stand in his own behalf, and at 5 o'clock p. m., on the 11th day of May, 1939, rested his case, and thereupon moved the court for a directed verdict of not guilty, which motion was by the court then and there overruled.

And on the 12th day of May, 1939, at 4:15 o'clock p.m., the jury having heard all the evidence, listened to arguments of counsel and received the charge of the court, retired to consider its verdict, and after due consideration, on the 13th day of May, 1939, at 9:45 o'clock a.m., the jury returned into open court and reported its verdict, which verdict is in the following words and figures, to wit:

> "We the jury in the above styled case for our verdict say we find the defendant J. E. Pierce guilty on all fifteen counts (15), Namely II-IV-V-IX-X-XI-XII-XIV-XV-XVI-XVII-XVIII-XIX-XX-XXI, as charged in the

Order: Jury Trial: Verdict of Guilty and Sentence

indictment. This 13 day of May, 1939. J. W. Stroud, Foreman."

Therefore, in view of the verdict of guilty by the jury on the 15 counts on which the defendant was tried, and the court having given due consideration, It is by the court,

ORDERED AND ADJUDGED:

1st: That the said defendant, J. E. Pierce, for the offenses by him committed, as charged in Counts 2, 4, 5, 9 and 10 of the indictment be imprisoned in a UNITED STATES REFORMATORY to be designated by the Attorney General of the United States, or his duly authorized agent, for a term of THREE (3) YEARS, under each of said Counts 2, 4, 5, 9 and 10, said terms of imprisonment to run concurrently; and

2nd: That the said defendant, J. E. Pierce, for the offenses by him committed, as charged in Counts 11, 12, 14, 15 and 16 of the indictment, be imprisoned in a UNITED STATES REFORMATORY, to be designated by the Attorney General of the United States, or his duly authorized agent, for a term of THREE (3) YEARS, under each of said Counts, 11, 12, 14, 15 and 16 of the indictment, said terms of imprisonment to run concurrently, but to run consecutively to the concurrent terms of imprisonment imposed up said defendant under Counts 2, 4, 5, 9 and 10 of the indictment; and

3rd: That the said defendant, J. E. Pierce, for the offenses by him committed, as charged in Counts 17, 18, 19, 20 and 21 of the indictment, be imprisoned in a UNITED STATES REFORMATORY, to be designated by the Attorney General of the United States, or his duly authorized agent, for a term of TWO (2) YEARS, said term of imprisonment to run concurrently, but to run consecutively to the concurrent terms of imprisonment imposed upon said defendant under Counts 11, 12, 14, 15 and 16 of the indictment; and

4th: That the said defendant, J. E. Pierce, pay a fine of

Order: Jury Trial: Verdict of Guilty and Sentence

TWO HUNDRED FIFTY ($250.00) Dollars under each of said counts 2, 4, 5, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 21; and

5th: That the said defendant, J. E. Pierce, be further imprisoned until payment of his said fines, or until he is otherwise lawfully discharged.

Thereupon, the defendant, by and through his attorney, moved the court for the time allowed by law within which to file a motion for a new trial, which was by the court granted; and upon application of the defendant, and the United States Attorney recommending same, the defendant was by the court allowed to stand on his present bond pending the hearing on said motion for a new trial, or the further orders of the court.

Approved: William McClanahan
U. S. Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF TENNESSEE
UNITED STATES OF AMERICA

vs

J. E. PIERCE
No. 4952 Criminal.

NOTICE OF APPEAL

Name and address of Appellant:
J. E. Pierce, Huntsville, Alabama.
Appellant's Attorney:
L. E. Gwinn, 725-35 Columbian Mutual Tower, Memphis, Tenn.
Offense:

Grounds of Appeal

Falsely assuming or pretending to be an Officer of the United States, and taking upon himself to act as such, and in such pretended character obtaining money or other things of value, in violation of Section 52 of the Criminal Code (USCA Title 18, Section 76).

Date of Judgment:

Verdict returned May 13, 1939 and sentence imposed on same date.

Motion for a new trial made and filed within the three day period allowed by the rules of the Supreme Court: Order overruling motion for new trial made on June 21, 1939.

Brief description of Judgment and Sentence:

The jury returned a verdict of guilty on fifteen counts of the indictment. Sentences were imposed under all counts—concurrent, and other cumulative. The cumulative prison sentence for appellant amount to eight years imprisonment in a Federal Reformatory. Fines aggregating $3750.00 were also imposed.

Appellant was admitted to bail, pending the determination of his appeal.

I, the above mentioned appellant hereby appeal to the United States Circuit of Appeals for the Sixth Circuit from the judgment above rendered on the grounds set forth below.

J. E. Pierce,
Appellant.

GROUNDS OF APPEAL

I.

There is no substantial evidence to support the verdict of guilty under any count of the indictment.

Grounds of Appeal

II.

The Court erred in overruling appellant's motion for a directed verdict, made at the close of all the evidence in the case, exception being duly taken to the action of the Court in so doing. This was error in that:

(a) No witness, testifying to a transaction involved in any count on which a verdict of guilty was returned, states any facts or circumstances showing or tending to show that defendant falsely assumed or pretended to be an "officer or employee, acting under the authority of the United States."

(b) There was no evidence showing or tending to show that defendant obtained any money or things of value from any witness for the Government testifying to a transaction involved in any count of the indictment, in the "pretended character" of an "officer or employee, acting under the authority of the United States," etc. But the undisputed evidence relating to each count shows that defendant obtained money or checks as a newspaper publisher; and that he then and there gave the witness a receipt, executed by him as a newspaper editor, showing the capacity in which he received the funds and the execution of this receipt was not an overt act in keeping with any claim of federal authority, but a strictly private act on the part of the editor of a newspaper, the receipt so showing on its face.

(c) The claim by the defendant, if made, that he was a representative of the Government, acting in furtherance of its Power Program, was not an impersonation of an "officer or employee, acting under the authority of the United States." But if it could be so construed, there is no evidence of an overt act on the part of the defendant in keeping with the pretense that he was an "officer" or "employee", acting under the authority of the United States Government.

III.

The defendant was denied a fair and impartial trial in that the United States District Attorney persistently and consistently sought to convey to the jury the impression that

defendant, by means of bogus and worthless advertising, cheated and defrauded Government witnesses and others of their funds, this being done to such an extent as to obscure the issue of false impersonation presented by the indictment and to an extent that the resulting prejudice was not corrected by the instructions of the Court.

IV.

The defendant was denied a fair and impartial trial in that the examination and cross-examination of witnesses by the District Attorney and his arguments were so conducted as to make the defendant an object of scorn and ridicule to the jury and divert its attention from the issues presented by the several counts of the indictment.

V.

The Court erred in overruling defendant's motion for a mistrial, made at the conclusion of the cross-examination of the defendant's witness, E. H. Roach. This was error in that the cumulative effect of the errors theretofore committed, including the unfair and prejudicial cross-examination of this witness, combined to deprive the defendant of a fair trial on the particular offenses charged in the several counts of the indictment.

VI.

The Court erred in overruling the sixth ground of appellant's motion for a new trial, which ground is in words and figures as follows:

"The Court erred in overruling defendant's special request number 1, which is as follows:

> 'At the request of the defendan , the Court further instructs the Jury that the Tennessee Valley Authority, commonly designated as T. V. A., although an instrumentality of the Federal Government, is a corporate entity, separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the statute on which the

indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the T. V. A., or was connected with the T. V. A. as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment.' "

This was error for the following reasons:

(a) The offenses alleged in the indictment and sought to be proven, if committed at all were committed in May and June, 1935.

(b) The impersonation of an officer or employee of the Tennessee Valley Authority, if defendant impersonated such officers or employees, or claimed to be a representative of the T. V. A., was not within the scope of Section 32 of the Criminal Code (USCA Title 18, Sec. 76) until the amendment thereof on February 28th, 1938, which amendment was adopted approximately three years after the commission of the alleged offenses for which defendant was tried and convicted. Said section as it now reads with the February 28th, 1938 amendment thereof, underscored, is as follows:

"76 (Criminal Code, Section 32) Falsely pretending to be United States Officer.

Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, *or under the authority of any corporation owned or controlled by the United States*, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department thereof, or any officer of the Government thereof, or any corporation owned or controlled by the United States, any money, paper document, or other valuable

thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both. As amended Feb. 28, 1938, c. 37, 52. Stat. 83."

(b) In the absence of the foregoing instruction or a specific instruction on the point therein presented, the jurors were given no guide to distinguish between the legal effect of representation, if any, that defendant claimed to represent the Federal Government, if such were made, that he was connected with or represented the T. V. A. and was selling T. V. A. Units. And in view of the blending of the evidence as to such alleged representations concerning the Government and the T. V. A., the instruction requested was necessary to a clarification of the issues and a restriction thereof to offenses within the scope of section 32 of the Criminal Code as it existed at the time of the commission of the offenses charged in the indictment.

On the hearing of the motion for a new trial, there was offered in support thereof, the affidavit of appellant, J. E. Pierce, with certain exhibits thereto, these being excerpts from the testimony at the trial of this cause in February, 1939, in which the jury failed to agree upon a verdict.

VII.

The appellant was denied a fair and impartial trial as a result of the consistent and persistent inquiries, made by the District Attorney, of witnesses for both the Government and the appellant as to the value and benefit of the advertisements for which appellant claimed to have solicited funds, either to the County or group of Counties advertised, or to the individuals contributing to the fund, was calculated to, and intended to, create unfair prejudice against the appellant and to confuse the real issues presented for the consideration of the jury, to-wit: the alleged false impersonation of officers of the United States.

VIII.

The appellant was denied a fair and impartial trial as a result of the cumulative prejudicial effect of rulings and

statements of the trial Judge throughout the proceedings, including the following:

During direct examination of the appellant, Pierce, the following occurred:

"Mr. Gwinn:

Q. Mr. Pierce, in giving a receipt to the subscriber, did you fold that receipt or not, or do you recall?

A. I don't recall ever having folded a receipt. It was on a pad and when I wrote it I handed it to the prospect with my right hand and held the pad with my left hand.

Q. If you had folded—

GENERAL McCLANAHAN: Don't lead the witness.

MR. GWINN: I would like to ask the question and then have your Honor rule on it.

THE COURT: Ask the question.

MR. GWINN: I was preparing to ask the question when General McClanahan interrupted.

Q. Mr. Pierce, if you had folded receipts, as testified to by some of the Government witnesses, what reason, if any, did you have for folding the receipts?

GENERAL McCLANAHAN: I object to that, your Honor.

THE COURT: Sustained.

MR. GWINN: Note my exception.

Q. After giving receipts to a prospect, did you remain in the community or immediately leave the community?

A. Stayed in the community where I was working until I got through.

Q. And the receipts in evidence were in the form, I believe you have stated were on the billhead of the paper?

A. Yes, sir.

Q. And the receipts in evidence were in the form, I believe you have stated were on the billhead of the paper?

A. Yes, sir.

Q. Mr. Pierce, do your remember Mr. Joe Lucky?

A. Yes, sir.

Q. Mr. Pierce, do you remember Mr. Joe Lucky?

A. Yes, sir.

Q. Did you see Mr. Lucky after you had been arrested in Gibson County?

A. Yes, sir.

Q. What, if anything, took place between you and Mr. Lucky, on that occasion?

A. Mr. Lucky was very angry and demanded the return of his $10.00 or he was going to turn me over to the Government, and advanced on me in the crowd, and the presiding magistrate remonstrated with him that he was a magistrate himself and it was up to him to be a pace officer rather than be antagonistic. I told him to turn me over—I hadn't violated any law.

Q. Did he attempt to make an assault on you?

GENERAL McCLANAHAN: He is still leading him your Honor.

THE COURT: That's sustained.

MR. GWINN: I am not going to argue with the Court.

THE COURT: You observe the rules of the Court, Mr. Gwinn, and quit arguing back.

MR. GWINN: Note my exception.

THE COURT: Your conduct is reprehensible. You are being deliberately disrespectful to the Court and you want to desist from that."

And this, during cross-examination of the government witness, J. T. Mathis:

BY MR. GWINN

"Q. You remember very distinctly you were speaking just about like you are speaking now?

A. I have been asked to talk loud so the honorable Court can hear, and I had been asked to talk loud, and naturally that caused me to raise my voice.

THE COURT: I want to thank you for it. I haven't

had a witness to testify in my court in several months that testified in a better tone of voice.

THE WITNESS: Thank you, Judge."

And this during cross-examination of the Government witness, Carl Robinson:

"Q. (Mr. Gwinn) Did you ask Mr. Pierce to wait?

A. No, I—

Q. Did you—

GENERAL McCLANAHAN: What did you start to say?

A. I didn't have time to ask him.

Q. You didn't say 'hold on there?'

A. No sir.

Q. You said nothing?

A. No, sir.

Q. And you let him go without any protest or complaint whatever with your $20.00?

A. I sure did.

MR. GWINN: That's all.

RE-DIRECT EXAMINATION
BY GENERAL McCLANAHAN

Q. I believe you stated you didn't have time—

A. I didn't have—

MR. GWINN: If your Honor please—

THE COURT: I think that is correct cross-examination, Mr. Gwinn. You may explain why you didn't protest to the defendant.

A. In fact, Mr. Roach had done started the car and Mr. Pierce stepped in the car and drove right on off, and in fact, gentlemen, I am not educated and don't know a great deal, and I never thought anything about the man being frisking me out of $20.00 like he did.

THE COURT: You may examine him further. Brother Gwinn, if you want to.

MR. GWINN: No, if your Honor please."

Grounds of Appeal

The undersigned, L. E. Gwinn, Attorney for J. E. Pierce, stated and certified that the foregoing appeal is taken in good faith and not for delay, and further states and certifies that he believes that the record presents substantial grounds for review by the United States Circuit Court of Appeals for the Sixth Circuit and for a reversal of the judgment of the trial Court.

L. E. Gwinn
ATTORNEY FOR APPELLANT

Service of the foregoing notice of appeal accepted, this 8th day of June, 1939

William McClanahan
United States Attorney
By R. G. Draper
Ass't. U. S. Atty.

BILL OF EXCEPTIONS

BE IT REMEMBERED, That the above styled cause came on for trial on this the 8th day of May, 1939, before the Hon. John D. Martin, Judge, and a Jury, duly impaneled and sworn, when and where the following proceedings were had, to-wit:

APPEARANCES

For the United States: Hon. William McClanahan
United States Attorney.
Hon. Thomas C. Farnsworth,
Asst. U. S. Attorney.

For the Defendant: Hon L. E. Gwinn,
Hon. William H. Pierce.

(The jury was examined, accepted by both sides and sworn; the witnesses were sworn and placed under the rule;

GENERAL McCLANAHAN: If your Honor please the defendant's attorney waives the formal reading of the indictment and we are ready to proceed with the evidence.

MR. GWINN: We will waive the reading of the indictment and stand on our plea of not guilty.

THE COURT: Gentlemen of the Jury, the reading of the indictment is waived and the defendant stands on his plea of not guilty.

The Government in support of its contention, thereupon introduced the following evidence:

TOM ANDERSON, sworn, testified as follows:

I live about four miles south of Covington, Tipton county, Tennessee, and have been engaged in the gin and mercantile business in that county about seventeen years. Mr. Pierce came to my store at Mt. Carmel in 1935. In March or April, or the spring of that year. On the morning Mr. Pierce came out there in the afternoon, I saw Mr. Penner in Covington and he told me that "two TVA men wanted to see me and would I be at the store that afternoon and I told him I would."

Mr. Pierce, Mr. Roach and Mr. Penner came to my store that afternoon, and Mr. Pierce came in and introduced—he didn't introduce himself so much but he said "Hello, old Tom Anderson", I looked up and thought I had met him but I had not, and I invited him into my office in the rear of the store.

My office is elevated about three feet above the main Auditorium, the main building. Mr. Pierce and Mr. Roach came up but Mr. Penner did not. I invited Mr. Penner up but he stayed down with the crowd in the store. Mr. Pierce approached me on the TVA and spoke very rapidly and talked to me very freely about the matter and suggested that I should contribute $150.00 to it, because we had to raise so much money in the county for the Government to grant an equal amount in order to get the TVA started in our county; so I refrained a little bit from giving $150.00 and told him I would give $100.00. He spoke about he was working and he had a great interest in the administration, and he and

"Franklin", and he spoke of Franklin D. Roosevelt and told me that he was a class-mate of Franklin D. Roosevelt, and I thought by him being a class-mate of Roosevelt, being President at the time, and I saw a good many names on the list, that I would contribute to this because, well, I was already sold on the TVA subject, and it didn't take very much for me to give him $100.00. He asked me for a picture of my home and a picture of myself, and I declined to do that; I told him that I didn't care about that, and he stated quite a lot about this paper. He asked me if he could put my picture in his paper. There wasn't so very much said. He represented himself to me as a Government man and he had to make a report, and I asked him if I couldn't wait until later to contribute, and he said "no", I had to contribute then as he had to report to Washington every day or every night. That was about all.

Q He had to report what to Washington?

A The amount, well that you contributed to this cause.

Q Did he say anything about advertisements?

A Yes, he said he was head of a paper and he was a publisher I believe.

Q Did he sell you any advertisement in the Huntsville Daily Register?

A No, sir, I didn't think he was.

Q Did you have anything to advertise?

A No, sir, not in the Huntsville paper. I wouldn't think so.

Q Did he sell you twenty issues of the Huntsville Daily Register?

A That's what I got.

Q Is that what you bought at that time?

A No, sir.

Q What were you buying from Mr. Pierce at that time?

A He spoke of them as units, and the reason he said I should pay $150.00 was that I had a store and a couple of gins to operate and he said I should pay more in order to get this work started because I had more than an ordinary farm house.

Q He spoke of it as units?

A Yes, sir.

Q What kind of units?

A Well, I really wouldn't know, General. He just spoke of them as units.

Q Did he say how much a unit?

A Ten dollars I think was his explanation of it.

Q And he wanted you to buy $150.00 worth?

A Yes, sir.

I bought $100.00 making payment by check, and that is the check you exhibit to me (Government Exhibit—). It was written by Mr. Hill, my bookkeeper, and signed by me.

Q Go ahead and give us the facts. Tell us about the signing of that check. What happened?

A Well, when Mr. Hill handed me the check he was standing at his desk and he handed the check to me and I signed it. I did not notice the check; only the amount. That's about all I ever notice, is the amount, because I know what it is for.

Q Did you instruct Mr. Hill to write out this check?

A Yes, sir.

Q Did you tell him what to put on it?

A One Hundred Dollars, yes, sir.

Q Did you tell him what else to put on it?

A No, sir, I just told him to give Mr. Pierce a check for a hundred dollars.

Q How did he know what to put on it?

A Mr. Pierce instructed him.

Q Did you hear Mr. Pierce instruct him?

A No, after we finished the conversation, I think a flour man called upon me from Kansas; I had been buying flour from him; I invited him up to talk to him about flour.

I bought $100.00 making payment by check, and that is the check. I gave Mr. Pierce nothing to advertise. I had nothing to advertise. This appeared in the Huntsville paper:

"Tom Anderson, outstanding merchant, ginner and cotton buyer." I did not dictate a word of that. No one introduced Mr. Pierce to me; he said "Hello, there, old Tom Anderson".

Q I believe you stated that you did not see anything on the check but the $100.00?

A That's all; I didn't pay any attention to it. I just saw the $100.00.

Q Did Mr. Pierce and Mr. Roach have a bundle of papers there, Mr. Anderson?

A Yes, sir.

Q Who held the papers?

A Mr. Roach.

Q Did you examine them?

A I didn't look at the papers. I just glanced at them and I couldn't read anything as Mr. Pierce was talking.

Q Talking—

A Yes, sir.

Q —and turning the papers?

A Yes, sir.

Q Was he turning them fast or slowly?

A Just turning them over and over back and forth.

Q And Mr. Pierce was talking?

A Pierce was talking.

Q What was he talking about?

A About TVA, and about Mr. Roosevelt and how prosperous we were going to be under the present administration.

Q How Mr. Pierce told you you would put up so much money, and who would put up the rest of it?

A The Government would give a grant to equal the County's, and the best I remember the County was supposed to raise $1200.00 or $1400.00.

Q And who would put up the rest?

A The Government.

Q A like amount?

A Yes, sir.

Q Or more?

A A like amount to get the TVA project started.

GENERAL McCLANAHAN: That's all.

I did not notice the word "advertising" on the check when I signed it; all I noticed was $100.00.

CROSS EXAMINATION:

Q Mr. Anderson, that is your signature on this check?

A Yes, sir.

Q And you signed it?
A Yes, sir.
Q In whose handwriting is it?
A Hill's.
Q He is your bookkeeper?
A Yes, sir.
Q He writes a plain hand?
A Yes, sir.
Q Rather bold, large letters, isn't it?
A Yes, sir.
Q Very easy to see?
A Yes, sir.
Q And the word "advertising" plainly appears on that check in Mr. Hill's handwriting?
A Yes, sir.
Q Not the defendant's?
A No, sir.
Q And it is as plain as anything else on there?
A Yes, sir.
Q As plain as anything else on the check?
A I should think so. The only thing I noticed was the $100.00. I merely looked at the $100.00. I didn't notice who it was made to or anything about it.
Q The fact that you were making a contribution of $100.00 didn't that impress you enough that you would look to see to whom the check was payable?
A I thought I knew.
Q And you knew the amount of it?
A Yes, sir.
Q You had implicit confidence in your bookkeeper, Mr. Hill?
A Yes, sir.
Q Why did you look at the amount, and not read the body of the check?
A I always look at the amount.
Q Was there any more reason to look at the amount than there was to look at whom it was payable?
A I was sure Mr. Hill would make the check payable to the right party.

Q You instructed him as to the amount to put on the check?

A Yes, sir.

Q He got that instruction from you?

A Yes, sir.

Q Mr. Pierce—General McClanahan, have you got that letter of identification?

GENERAL McCLANAHAN: I can get it for you.

MR. GWINN: All right.

GENERAL McCLANAHAN: Here it is. (Hands Mr. Gwinn letter)

Q Mr. Pierce was introduced to you by Mr. Penner, wasn't he?

A Mr. Penner brought him in. Mr. Pierce, to the best of my recollection, introduced himself, because he came in and spoke to me.

Q What did he say?

A "Hello, old Tom Anderson."

Q You have testified twice in this case?

A Yes, sir.

Q Did you state in either of the former trials that he came in and said "hello, old Tom Anderson?"

A I don't know, but that's how he addressed me.

Q You never thought of that until four years afterwards?

A I am not trying to think of it now. The only reason I think he called me old Tom Anderson is that I am known in Tipton County as Old Tom.

Q Old men like Bill McClanahan and me don't call you "Old Tom."

A I advertised once on a float in the County fair as Old Tom Anderson.

Q Isn't it a fact that so many people greet you that way that four years after this occurred you say that Mr. Pierce called you "Old Tom?"

A I might have stated some things that Mr. Pierce said that I didn't in my prior testimony, but—

Q But as you recall—

GENERAL McCLANAHAN: Let him finish his answer, Mr. Gwinn.

MR. GWINN: Go right ahead.

A —As I told you in the past, I couldn't remember everything he said. I am merely trying to state the facts.

Q You can't remember the exact language, or anything that he said to you?

A Pretty near. I might not remember everything he said.

Q You won't say you remember everything he said?

A That would be impossible, I believe.

Q In the first trial of this case, the matter was much fresher in your recollection as to what Mr. Pierce said, and what you did then than it is now, four years later? That would be natural?

A Yes, and I believe I testified on my first examination, in the first trial, that he came in and called me old Tom Anderson.

Q Do you think you did?

A I believe I did.

Q Mr. Anderson, as a matter of fact, did you, in that first trial, when the matter was much fresher on your mind than it is now, testify very positively and emphatically, that you didn't sign this check at all?

A And I tried to explain to the Court since that time why that was a mistake on my part.

Q I am just asking you if you did give that testimony?

A I did.

GENERAL McCLANAHAN: Now let him explain.

MR. GWINN: I have no objection to him explaining.

A Mr. Hill, when he first started to work for me, for the first year or year and a half, I signed my own checks and when the checks were filled out I signed them. Since that time the bookkeeper signs the checks himself.

Q But you did testify, in the first trial of this case, in answer to a question of mine: "I told you many times that I did not see the check or sign the check?"

A I did say that, but the reason I was mistaken was because I thought at that time that Mr. Hill was signing the checks.

Q Mr. Anderson, will you repeat, in your own language, without interruption or suggestion from me, as best you can

recall, what Mr. Pierce said—not what you thought, or your impression or your conclusion, but just what, as best you can recall, Mr. Pierce said to you on that occasion?

A Mr. Pierce entered the store with—what is that gentleman's name?

Q Penner?

A Mr. Penner, and Mr. Roach. I had never met Mr. Pierce or Mr. Roach either. They came in the store and Mr. Pierce came in with a walking cane and a big white hat and with his hair hanging around his shoulders, and said, "Hello, old Tom, "Old Tom Anderson" "I think it was "Old Tom Anderson," and I thought I had met him before. I invited him in the office and he and Mr. Roach came up. I invited Mr. Penner in, but he refused. He told me he was there in the interest of TVA and that our county was expected to donate or contribute or raise $1400.00 and the Government would contribute likewise, a like amount, in order to get TVA started in Tipton County, and he thought $150.00 would be small enough for me, and I look at some checks he had from other parties, and I noticed that several of the gentlemen that I knew very well had contributed. I was sold on TVA to begin with, and these gentlemen that he held the checks for that I knew were very conservative, and I really thought they woulld know before they paid out their cash money, but I did tell him I thought a hundred dollars was plenty for me. He thought I should contribute $150.00 because I had a couple of gins and a store, but I told him that $100.00 was all I could give at that time.

Q And that's what occurred? That's all that occurred?

A No, there was some other conversation. He went on and talked about why he was down there, and he said that Franklin D. was a wonderful man, and he said, "By the way; Tom, he was a class-mate of mine," and I thought that if he was a classmate of Franklin D. Roosevelt he certainly wouldn't be down there on something not aboveboard.

Q What else did he say?

A Well, he said that he was taking an interest in this administration and the TVA, and also he wanted my picture

and a picture of my home in his paper, showing that I was contributing and that I was patriotic enough to join in the thing with the other people and finance this program.

Q And what else?

A Well, I don't—I don't recall anything else in particular. He talked quite a lot and very fast; he was quite a talker.

Q Did he say he was there in the interest of TVA, or in the interest of the Government?

A He said he was there in the interest of the Government, in the interest of TVA; represented himself to me as an officer of the Government, and told me that he had to make a report every night. I asked him could I wait in making the contribution until tomorrow morning, and he said no, I had to do it then.

Q Did he tell you he was an officer of the Federal Government?

A He was representing the Government to me.

Q Did he say he was an officer?

A I wouldn't say he said he was an officer.

Q Did you say he said he was representing the Government?

A I was being advertised in that paper —

Q I didn't ask you that. Did he say he was representing the Federal Government?

A He said enough to me to make me believe that he was there for the Federal Government and that I was required to put up this $150.00 or as much as I felt like I could in order to raise this $1200.00 or $1400.00 which was going to be granted from the Government against that to start TVA in Tipton County. He also said we would have TVA in a few months.

Q The question I asked you, Mr. Anderson, was if he stated to you—not what you thought, or your impression or your conclusion—if he stated to you that he was an officers of the Federal Government, or that he represented the Federal Government?

A He said he was there—

Q I am not asking you what he said he was there for?

GENERAL McCLANAHAN: Give him an opportunity to answer your question.

Q All right, what did he say?

A Just how he said it or how he led me up to this, he was there in the interest of the Government, or as a government officer; just how he said it I wouldn't be willing to say, but he said he was an officer of the TVArepresenting the Federal Government, but just how he said it I don't know.

Q As a matter of fact, this thing was much fresher in your testinmony in the first trial—in your testimony in the first trial, and you couldn't say and wouldn't say that he said he represented the Government? That was your testimony on the first trial?

A I am saying now that I wouldn't say how he brought that up.

Mr. Pierce told me I could deduct the $100.00 from my income tax. I do not kno wwhether I could have deducted anything I contributed to a community enterprise or public advertisement but I thought I could deduct any thing I contributed to this project. I was not buying advertisement.

Q Mr. Andesron, you understand the difference, don't you, between community advertising, or what is known as publicity advertising or booster pages, and your own individual advertising on something you have to sell?

A I have never advertised but very little; I never spent $50.00 advertising in a paper besides this $100.00 that I gave him.

Q Then you did not understand at that time the difference between a community advertisement or a write-up of the county, and a personal advertisement, advertising something to sell, where one would be a donation and the other not?

A I was contributing to this because I thought I was doing something for the country.

Q And the County?

A Yes, sir, but I didn't do it for advertising.

Q You didn't do it for personal advertising, did you?

A Well, I thought the money was going to be well spent.

Q You didn't think you were buying stock, did you?

A No, I didn't know. He called himself selling units. He mentioned ten dollars per unit.

Q And that was the basis—

A And I have two gins and a store.

Q That was the basis on which he was seeking contributions or soliciting funds, at so much a unit?

A Yes, sir.

Q And he told you it would require about $1400.00, this contribution?

A Else $1200.00 or $1400.00.

Mr. Pierce showed me several checks he had from other people I knew but I only read the signatures. I remember the amount of Mr. John D. McClanahan for $80.00. He did not turn the checks over to me, but I could have seen what was on the checks if I had suspicioned any thing.

Q And he turned those papers, with a page advertising the different counties. Now, Mr. Anderson, I hand you one of the exhibits in the former trial and ask you if you have seen, or heard this read before?

A (Examines letter) He pulled the letter out of his pocket and read it like it was coming from Roosevelt.

Q That isn't the question.

A He read part of the letter and talked at the same time.

Q Have you seen the letter before?

A Yes, sir.

Q And read it over twice?

A I have never read the letter through.

Q All right, just read the letter through.

A (Examines letter).

Q He read a letter like that to you?

A Part of it, but he didn't read it through to me.

Q What?

A He started out and then would tell me something else. He would look off and tell me something else.

Q What part of the letter, or what paragraphs did he leave out?

A Let me see. (examines letter). He started out, "This will

introduce J. E. Pierce, Editor and Vice-President of the Huntsville Daily Register, Huntsville, Alabama. As a matter of information and identification, Mr. Pierce is 53 years of age, six feet tall, weighs 196 pounds—" and he would then talk to me. "We have assigned Mr. Pierce to the task of completing the Muscle Shoals series of page newspaper advertisements," and so forth, and then he would talk to me again.

Q How far down did he read the letter?

A He read two or three different times from the letter, but he didn't finish the letter.

Q But he read over what you have read to the Jury?

A Yes, sir.

Q You didn't ask him to show you the letter?

A No, sir.

Q You say you thought this letter, which is signed by the Huntsville Daily Register and the Register Publishing Company by William H. Pierce, you say you thought it was signed by the President of the United States?

A Yes, sir, I didn't have it in my hands.

MR. GWINN: May I introduce this letter as an exhibit?

THE COURT: Let it be received in evidence.

(Letter referred to was received in evidence and marked Exhibit 2).

(Letter was read to Jury as follows:

"To whom it may concern.

"This will introduce J. E. Pierce, Editor and Vice-President of the Huntsville Daily Register, Huntsville, Alabama. As a matter of information and identification, Mr. Pierce is 53 years of age, 6 feet tall, weighs 196 pounds on the average, prematurely gray, wears glasses, carries cane, and while presenting pleasing personality and stately appearance, he is modest and of a retiring disposition.

"Mr. Pierce erected one 12 story office building in Huntsville; he is one of the directors of the magnificent 12 story hotel here, one of the owners of a 7 story bank building, a substantial farmer, he is a Deacon in the First Baptist Church and is actively identified in Chamber of Commerce and civic work generally.

Tom Anderson

"We have assigned Mr. Pierce to the task of completing the Muscle Shoals series of page newspaper advertisements (20 in number) for each group of one or more counties from the Georgia line to the Mississippi River.

"In this work, Mr. Pierce is authorized to transact any and all business pertaining to the interest of this company, including the endorsement of checks, drafts and other items made payable to order or otherwise in favor of this company. Banks, bankers and or trust company yor companies, as well as individuals, are requested to so recognize his authority as Vice-President and or Editor of the Huntsville Daily Register.

"Any courtesy you may extend Mr. Pierce in the fine public work in which he is engaged will be appreciated on the part of the company, and thanking you, we are,

Respectfully yours,
The Huntsville Daily Register,
The Register Publishing Company,
By William Pierce,
President."

REDIRECT EXAMINATION:

I did not have the check with me at the first trial, and had not seen it prior to that trial. Mr. Pierce left immediately. He did not stay three minutes after I gave him the check, I don't suppose—

RECROSS EXAMINATION:

I told Mr. Hill to make out the check to Mr. Pierce or whoever he authorized. I did not hear what Mr. Pierce said to Mr. Hill. A flour man, Mr. Freeze, was waiting for me. He came into my office as Mr. Pierce was going out; my office is about eight by ten feet in size. My desk is about eight feet from that of Mr. Hill. I am sure that Mr. Hill handed me the check for me to sign. Mr. Pierce was present.

REDIRECT EXAMINATION:

I did not see the check till after I testified the first

time. Pierce said his letter was signed by the President; President Roosevelt.

J. A. HILL, being duly sworn, testified as follows:

I have been bookkeeping for Tom Anderson for five years. I remember when Mr. Pierce accompanied by Mr. Roach, came to Anderson's store, and I wrote the $100.00 check on Anderson's instructions. I was busy and did not hear the conversation between Pierce and Anderson. Mr. Pierce told me to make the check payable to the Huntsville Daily Register or bearer. Mr. Anderson was seated at his desk about eight feet away. Mr. Pierce was within three or four feet of me, behind me, and I wrote the word "advertising" on the check on the instructions of Mr. Pierce. The check is dated March 26, 1935.

CROSS EXAMINATION: Mr. Pierce was seated at Mr. Anderson's desk when he instructed me to write the check, and so was Roach I asked Mr. Pierce who to make the check to and he told me, in the presence of Mr. Anderson, to make it payable to the Huntsville Daily Register or bearer. And I asked him what it was for in the presence of Mr. Anderson and he told me it was for "advertising", and I wrote that on the check myself. There was no concealment from Mr. Anderson. Mr. Pierce did not whisper his instructions. He was four, five or six feet behind me, and there was nothing to keep Mr. Anderson from hearing him. After I had given him the check, Mr. Pierce gave me a receipt, handing it to me there in the office.

REDIRECT EXAMINATION:

I do not know whether Mr. Anderson heard what Mr. Pierce said to me or not. Mr. Pierce wrote out the receipt, and placed it on my desk. It was a small receipt, not folded but an open receipt.

REAU GRAVES, being duly sworn, testified as follows:

I am in the garage business at Medina in Gibson County. Mr. Pierce stopped at my garage in May, 1935, and asked if I knew someone who was well acquainted in the com-

munity, some good man who knew every body there, and not being very busy, I asked him if I would do, and he said I was the kind of young man he wanted, one that knew every body, and he agreed to pay me three dollars a day, saying he wanted to call on the better class of farmers, prosperous farmers. "He told me that he was working for the Government in the interest of TVA; in other words, cheap power from Muscle Shoals down there." I went with him part of two days and we called on ten or twelve persons a day. When we called on a prospect, he wanted to know about him. He introduced himself a lot of times—he would walk up and holler in a big way like he was an old friend." He told me before I went out with him that he was working for the Government." In other words, he was working for the government in connection with cheaper power from Muscle Shoals. He was selling stock or units or whatever you might term them." This was a stock or units in the TVA. He told me he was worth half a million dollars. He told me about a big bank building and he told me he had a fine home worth a lot of money. Joe Luckey was the third man we called on. I did not introduce him. He was walking hurriedly; I believe he threw up his hands and said, "Hello, Joe," just like he was an old friend of Joe's. Mr. Pierce collected money both days, some by cash and some by check. I was with him at Humboldt where he tried to get two checks cashed at two filling stations, buying some gasoline at each station. One of the stations did not have enough cash to cash both checks. The checks were on good men around Humboldt, and Mr. Pierce asked me if there was another station near by, and I told him there was, and we went there and Mr. Pierce filled up the gasoline tank on his car and got this check cashed. It was about half a block between the two stations. We went to the bank at Medina the first day. Mr. Pierce carried blank checks on different banks with him. Mr. Pierce was arrested on the afternoon of the second day I worked for him. I did not see any one fill out checks but Pierce.

Reau Graves

CROSS EXAMINATION:

Mr. Pierce told me he wanted a man who stood well in the community and was well acquainted with the people to go with him, and I recommended myself as meeting these requirements.

Q What did he tell you he was doing?

A Working for the Government.

Q Working for the government or in the interest of a government program?

A Well, he was working for the Government in the interest of TVA.

Q Did he tell you he was a government official,—show you any badge?

A No, he didn't show me any badge.

Q He didn't tell you he was an officer of the government? He told you he was promoting cheap power?

A He said he was working for the government.

Q You can't recall his exact language now.

A Not his exact words.

Q And you wouldn't undertake to repeat the exact language he used on that occasion? I say you wouldn't undertake to do that?

GENERAL McCLANAHAN: If the Court please, Mr. Gwinn asks the witness a question and won't give him a chance to answer.

MR. GWINN: I am asking him if he would undertake to repeat his exact language.

THE COURT: The objection is sustained. Give the witness a chance to answer.

A Not just his exact words. I know their meaning and who he said he was representing.

Q In other words, you know what you thought he meant?

A I know what he said he meant.

Q What he said he meant?

A What he said he was doing.

Q Yet you can't state his exact language and you couldn't do it at the first trial of this case?

A Not the exact words.

Reau Graves

Q And you reached the conclusion that it was a government enterprise? You identified in your own mind cheap power and TVA as meaning the same thing to you?

A TVA and cheap power.

Q They meant the same thing to you? And a man talking about cheap or promoting TVA, it wouldn't make any difference what his exact words, you would have drawn the same conclusion that that was a government enterprise? You thought the Government was prompting it?

A I knew the government owned the dam and he told me he was working for the government.

Q Working in the interest of the government?

A He said for the government.

Q If you can't remember his exact language, how do you know he said he was working for the government?

GENERAL McCLANAHAN: If the Court please, the witness has emphatically stated, on three or four occasions, that he said that. Mr. Gwinn continues to argue with the witness.

THE COURT: I think so.

MR. GWINN: Note my exception.

Q Mr. Graves, did Mr. Pierce read any kind of letter to you?

A Well, I didn't ask him for any letter. He had letters and stuff in his case.

MR. GWINN: Mr. Combs will you read the question to him?

(Last question read by the reporter)

A I don't remember whether he did or not.

They had a bundle of newspapers. I was kept in the rear of the car. I rode on the rear seat. As I remember, the papers had the word Huntsville across the top. Mr. Roach would hold the papers in the sales talks. No effort was made to conceal these papers from me. I could have examined them if I had wanted to. I heard him tell some one he wanted a picture of his cabbage patch. He was talking loud and I could hear that.

Q You also heard Mr. Pierce ask a number of these prospects for the privilege of reporting in his paper that they

were advocates of good roads and lower taxes and cheaper power?

A I don't remember the exact words.

Q In substance you recall that? And you so testified in the first trial?

A If I did that's right.

Q But you don't remember whether you heard that or didn't?

A It has been four years ago.

Q You wouldn't undertake to tell the Court and Jury now what you did testify to four years ago?

A Not the exact words.

Q You don't know whether he said anything about good roads?

A He was interested in good roads.

Q And promoting that just as much as he was cheaper power?

A He mentioned that.

Q He said he was putting on a program in the interest of cheaper roads?

A I don't remember about the roads.

Q You do remember that he was boosting and advocating those things? You remember that?

A I remember him speaking about being interested in good roads.

Q Did he say anything about Muscle Shoals?

A Well, what he told me was that was where the power would come from.

Q He did talk about Muscle Shoals projects, didn't he?

A I don't recall the exact words, He was talking about cheaper power he was working for from Muscle Shoals.

Q You never heard any of his sales talks, did you?

A I heard them but I didn't try to remember them.

Q I believe you testified before that you side-stepped when he began to talk.

A I didn't step up.

Q You never heard anything he said to the prospects?

A I could hear him talking, but I didn't understand what he was saying.

Q You said before that he read a letter that was something and something but you didn't know what it was?

A He had some letters.

Q And you heard him read—

A I don't know whether he was reading or memorizing.

Q You don't know whether he was doing that or not?

A Memorizing.

Q Do you remember him reading, or reciting from memory, "We have assigned Mr. Pierce to the task of completing the Muscle Shoals series of page newspaper advertisements (20 in number) for each group of one or more counties from the Georgia line to the Mississippi River?"

A I don't recall.

Q You wouldn't say that he did or didn't?

A I didn't hear it.

Q You didn't hear the conversation he had with customers?

A No, sir.

Q Just what happened when Mr. Pierce approached Joe Luckey?

A Well, as I stated a few minutes ago, we stopped the car on the roadside, Mr. Luckey was in the cabbage patch.

Q How far from where you stopped the car?

A A pretty good-sized piece. He was on the far side walking.

Q Fifty feet or fifty yards of what distance, approximately?

A Well, I wouldn't say.

Q What did he say to Mr. Luckey?

A He said, "Hello, Joe," like he was an old friend.

Q You wouldn't say positively that he said that?

A He hollered at Luckey and I don't recall his exact words.

Q Mr. Graves, I want to ask you if, in the former trial—you are undertaking here to state certain conclusions and impressions—didn't you state that you wouldn't undertake or attempt to recall any single part of any conversation that Mr. Pierce had with any of the persons from whom he solicited funds?

A I wouldn't try to repeat any conversation.

Q Or any part?

A Nothing only something like hollering, at the time when

he would leave or say good bye.

Q And you wouldn't undertake to repeat a single part of his conversations?

A I don't know whether I could recall that or not.

REDIRECT EXAMINATION:

The reason Mr. Pierce gave me for cashing the checks was that he wanted to send the money in so they would know what progress he was making in Gibson County. He went to the telegraph office at Humboldt and went inside.

JOE LUCKEY? being first duly sworn and testified as follows:

I live at Humboldt, Tennessee, on a farm and I am a farmer. I was in my cabbage patch when Mr. Pierce came there in May, 1935, and introduced himself to me. I was not cutting cabbage, but looking after the work. He drove up in his car and when about 140 or 150 yards from me, Mr. Pierce said, "Hello, Joe, and I yelled back. I thought at the time that it was Judge Baptist of Jackson, but as he got closer I saw that I did not know him. He began to talk to me about my place and bragged on the cabbage patch saying it was the finest thing he ever saw and he bragged on that for some little bit and then made himself acquainted with me, telling me that he was J. E. Pierce "Representing the Federal Government, the TVA, from Huntsville, Alabama. He made me acquainted with Mr. Roach and I led him around to show him the best parts of my cabbage patch.

Q He got your pride worked up?

A Yes, I wanted to show him what I had. Cabbage were selling pretty good and I thought I would just show off a little, too, and we walked around over the cabbage patch and when we got back the boys had the cabbage loaded on the truck, and I wanted them to be off and I started for the truck, and he said, "Wait, I have to have ten minutes of your time," and I said, "I am in an awful hurry; not over that," and he said, "I am representing the Government and TVA." He was interested, he says in cheaper power, good roads and lower taxes. He said, "You are a magistrate in this county?" And I said, "Yes." And he said, "You are interested in all these things?"

and I said, "yes, sir, I am interested in them." He said, "I want to talk to you a few minutes." He told me he was representing the Federal Government and then his partner commenced turning papers and he commenced to talk. Of course, I was standing there just listening at him and wanting to get through as quick as possible, and when he got through he said he sold them in TVA units at $10.00 a unit, and a man could take one, two, three, or four, or whatever he wanted, and of course, I was already sold on TVA, and I says, "What is the less you will let a man out for?" And he says, "Ten Dollars," and I said, "All right." And before that he talked and told me that he wanted a hundred dollars out of each district in Gibson County, in order to put this through, and he says, "You are living in a settled part; this line will come along right in this neighborhood, and if you fellows will put up ten dollars, every time you put up ten the Federal Government will match it with ten dollars," and he says "Just as a cooperative community spirit," and he says "We will put that through over here." Of course, then I asked him what was the cheapest he was going to let me out, and he said $10.00, but he insisted that I pay him more, and I thought I couldn't give him more, and then he asked me about some other people that I could see, and I gave him a list of names.

Q How many brothers did you have?

A I had four at that time.

Q Did he know any of your brothers or not?

A I think I am the first one he ever met.

Q He told you he knew your brother Will?

A Yes, sir. I think I am the first one that bought. He saw the other two that day and contacted them that day, and he might have met one before he did me.

Q Did you give him $10.00?

A Yes, sir.

Q How did you pay him the $10.00?

A Gave him a ten-dollar bill.

Q Did he give you anything in return?

A Not right then he didn't give me anything. He talked

on about wanting ten more, and he said to his partner, he said, "Haven't we got some money in the treasury so we can give this man's wife a unit, too?" Mr. Roach says, "Yes, sir," and he said, "Let's give her one," and at that time he asked me her name and I told him, and he wrote out something on a piece of paper and doubled it like that (illustrating) and handed it to me and I stuck it in my overall's pocket. I didn't think it was a receipt for anything; in fact, I thought he was a Government employee and I thought I was giving ten dollars for a TVA unit, not to ever amount to anything but just as a cooperative spirit to help the TVA.

Q This paper that he gave to you, when did he write that out?

A Just as I started in the truck he said, "Wait a minute, I want to give you something to show you what we are going to be doing down here." He said, "I am going to send you a paper to show you what we are doing down here to advance this TVA."

Q How was the paper handed to you?

A It was a small piece of paper folded once and I folded it again.

Q Didn't you read it?

A No, sir.

Q You were in a hurry?

A Yes, sir.

Q How long did he stay after he got the money?

A I was gone and he was too, I reckon. I was in as big a hurry as he was.

Q What Church do you belong to?

A The Baptist Church.

Q Did he tell you what Church he belonged to?

A Yes, sir, he was a Deacon in the Baptist Church at Huntsville, Alabama.

Q You live in what is known as the Mount Zion Community, or Antioch?

A I am a member of the Antioch Church.

Q And you are a magistrate in Gibson County, Tennessee?

A Yes, sir.

Q That's in Gibson County?
A Yes, sir.
Q West Tennessee?
A Yes, sir.

CROSS EXAMINATION:

My recollection is that he asked me for ten minutes of my time. If I said 2 minutes at Medina I will stick to that.
Q In other words, you are sticking to what you said in Medina?
A Yes, sir; I try to remember this just as it happened. I haven't got any ill will towards no man.
Q You felt kindly toward Mr. Pierce, didn't you?
A Yes, sir, very kindly.
Q As a demonstration of that kindliness, a magistrate over there had to keep you from making a personal assault upon him?
A Not much.
Q And reminded you that the man was under arrest.
A That wasn't hard to do.
Q It was easy to hold you then, even though you were mad?
A It was easy.
Q Mr. Luckey, you say you and Mr. Pierce were both doing some "popping off" in that cabbage patch?"
A I said I was going to show off a little, too.
Q You said, in answer to Mr. McClanahan's question, that both of you were showing off?
A I said I was going to show off.
Q Show off or pop off?
A Show off.
Q And you were putting on a good show yourself, weren't you, Mr. Luckey?
A Well, I try to play according to a man's game. I just try to play even with him.
Q Mr. Luckey, did Mr. Pierce have any papers or documents?
A If Mr. Pierce had any in his hand, I don't recollect it. Mr. Roach had some papers.
Q What kind of papers?

A Maybe something like that and possibly a chart. It would turn in his hands.

Q Did he have this particular bundle?

A I don't know.

Q Did it look like them?

A I don't know. He had some papers that would turn mighty fast.

Q Take these papers and turn them like he did.

A I can't do it.

Q Nobody else could.

A That's right. Nobody can without they practice a while.

Q And nobody did turn these papers?

A Yes, sir, he turned them just like I said he did.

Q Who?

A Mr. Roach..

Q What kind of papers?

A Papers he had in his hand.

Q What size papers?

A Something like that. Two feet wide I would say.

Q Newspapers?

A I didn't pay any attention; not much attention.

Q You didn't pay any attention?

A Not much attention. The man said he was representing the Federal Government and I was sold on it and I bought it.

Q And when he told you he was in favor of good roads and lower taxes and cheaper power, you were in line with it?

A I was in line with it, yes, sir.

Q And you identified in your own mind a cheaper power program?

A Yes, sir.

Q With the TVA enterprise?

A I knew something about it.

Q And they meant the same thing to you?

A Yes, sir.

Q You wouldn't undertake now, four years later, to repeat the exact language he used?

A Not more than saying that he represented the Federal Government.

Q You remember that?

A Yes, sir.

Q Did he say he represented the Federal Government or was working in the interest of the Federal Government?

A He said he represented the Federal Government and was selling TVA units.

Q Did he say TVA stock? Say he was selling TVA stock?

A No, sir.

Q Did you testify at the hearing in Medina that he said he was selling stock?

A I remember the TVA units and he said $10.00 a unit.

Q Did he show you the units?

A No, sir.

Q Did you think you were buying any?

A No, sir, I knew I was giving $10.00 for progressive spirit.

Q And you knew you were giving $10.00 for advertising?

A He ain't said nothing to me yet about advertising.

Q He hasn't?

A No, sir not, up to today.

Q What did Mr. Roach roll those papers around for?

A I don't know; I wasn't paying much attention. I had my mind on something else.

I testified at Medina that I presumed he was giving me a receipt for the money I paid him and showing the purpose for which it was paid, and to show his Company what he was doing. but I don't think I said I read the receipt. There was nothing to keep me from reading it.

I'll ask you if these questions were asked you and did you make these replies, at the last trial:

"Question: And you haven't got that receipt?

"Answer: No, sir, I thought I was giving him ten dollars for the purpose of advertising the TVA, or hurrying it up in our community. I didn't expect anything for that then.

Question: You were not buying anything?

Answer: Just the advancements of TVA in our country."

A That's right.

Q And this question:

"Question: You were not buying anything?

Answer: No, sir.

A I wasn't buying anything. I wasn't expecting more than TVA.

Q What I am asking you is, were those questions asked you and did you make those answers?

A I will answer those questions like I did there and I will do it again.

Q I don't want to have you misunderstand me and I don't want to misunderstand you. Beginning with this question—may I pass it up where you can see it yourself? Beginning with that marked there: "Was there anything to keep you from reading it?"

A Anything to keep me from reading it? No, sir.

Q Just a moment. Read yourself and questions and answers in that mark.

THE COURT: No, you read it to him,

MR. GWINN: All right, your Honor.

GENERAL McCLANAHAN: Reach each question and then ask him.

Q All right.

"Question: Was there anything to keep you from reading it?

Answer: No, sir."

Q Is that correct statement or not?

A That's a correct statement.

Q All right: "Question: And you haven't got that receipt?

Answer: No, sir, I thought I was giving him ten dollars for the purpose of advertising the TVA, or hurrying it up in our community. I didn't expect anything for that then."

Question: You were not buying anything?

Answer: Just the advancement of TVA in our Country.

Question: You were not buying anything?

Answer: No, sir.

Question: You didn't expect that you'd get any stock?

Answer: No, sir."

A I didn't expect to get any.

Q The questions and answers I have just shown you and read to you, those are correct statements of your testimony at the last trial?

A Yes, sir.

Q Mr. Luckey, you were in a great rush, a great hurry, when Mr. Pierce came there to see you on that day; in as big a hurry as he was?

A I expect I was.

Q Did Mr. Pierce tell you he was working in the interest of the Government?

A He told me he was representing the Federal Government in the interest of the TVA. That's my recollection.

Q Mr. Luckey, I think the question I am asking you can be answered yes or no, and then you may make any explanation you care to. Did he tell you he was working in the interest of the Government?

A I don't remember whether he did or not.

Q I will ask you if you didn't so testify, or I will read these questions and your answers and let you look at them.

THE COURT: Yes, that's right; let him look at them.

Q Did you make these answers:

"Answer: He said he was representing the Federal Government to advance the TVA; that is what he said.

Question: Did he say 'officer of the Federal Government' "?

Answer: No, sir.

Question: Say 'officer of the federal government' "?

Answer: Said he was representing them.

Question: Did he say 'working in the interest of the government?"

Answer: Yes, sir.

Question: Was that language?

Answer: Yes, sir; he left that impression with me, if he didn't say it."

A That's right; I still say that, too.

Q You are now testifying as to the impression he made on you and the conclusion you reached from what he did say?

A Yes, sir.

Q And in reaching that conclusion, you didn't pay much attention to the demonstration that was made by Mr. Roach with these newspapers or whatever paper that was?

A Not much, no, sir.

Mr. Pierce, when he handed me the receipt said, : "I am going to send you a paper telling you what we are doing down here in the interest of the TVA."

He quoted me in the paper as being in favor of cheaper power and better roads.

Q Didn't yo utestify at Medina, when the matter was fresher on your mind, that he was giving you a receipt to show that he would send you a paper so you would know what he was doing?

A Yes, sir, he said he was going to send me a paper; that was after I had gone over to my truck to get in, and he said "Wait a minute," and he said, "this is a receipt for the papers we are going to send you showing you what we are doing."

Q So he did tell you he was sending you a paper?

A Yes, sir.

Q And he got your wife's name from you?

A Yes, sir, but before he gave me a receipt he got my wife's name and he said he was going to give her a unit, but I don't know if he did or not.

Q In your testimony at the last trial were these questions asked you and did you make these answers:

"Question: You identified TVA and cheaper power as the same thing in your mind?

Answer: Yes, sir.

Question: And you were sold on that before he came?

Answer: Yes, sir:

Q That's correct?

A That's correct.

REDIRECT EXAMINATION:

Q Did you have anything to advertise?

A No, sir, not in Huntsville, Alabama.

MR. GWINN: If your Honor please, I don't see—

THE COURT: Objection sustained."

My name was in the paper. I received 15 or 20 copies of it, but I do not think my name appeared in all of them. I was not buying any advertisement in the Huntsville Daily Register for my county. I never advertised anything in my life. I don't know what was done with the receipt.

RECROSS EXAMINATION:

"I gave Mr. Pierce the names of several persons on whom to call. I don't think I swore out a warrant for his arrest. I called several of these persons in connection with the Medina hearing. I expect I talked to these people before they testified. Clarance Luckey, Mr. Witt, Mr. Matthews and the two Mr. Lewis' who lived in the Medina neighborhood, and we have talked this matter over lots of times both before and after the magistrate's trial and in connection with the trial here.

(COUNT No. 2)

CALE H. WITT: Being duly sworn, testified as follows:

I am a farmer and live in the second Civil District of Gibson County. Mr. Pierce came to my home in May, 1935, and introduced himself. He approached me and:

A Claimed he was selling TVA units, the way I understood him, and I didn't talk to him very much, and it was early that morning and I had some breeding stock and I don't know how to tell you exactly what he said.

Q Go ahead and tell us the conversation you had with him the best you remember it.

A Well, we didn't have much conversation.

Q Just tell us what you did.

A He told me he was selling units, TVA. He said we had a good county, and we ought to have that in that country, and I told him I guess we wanted it, and he showed me a note book with a good many of my neighbors that had bought the units, I believe, and I agreed to take one $10.00 unit finally and he made out a check for me.

Cale H. Witt

Q Who made the check out?

A I believe Mr. Pierce. I am not sure. I had a blank check or he had one, I don't remember which; anyway, I signed the check and he gave me a receipt for the check and I was in a hurry.

Q How did he hand you the receipt?

A I handed him the check and he handed me a receipt, I don't remember just whether it was folded or open. I didn't look at it right then.

It was about 8:00 or 8:30 in the morning, when he gave me the receipt. I started to dinner about 11:30 and decided I would look at the receipt. I had not looked at it before that time. Mr. Pierce left right after I gave him the check. I don't suppose he stayed over five or ten minutes.

Mr. Roach and Reau Graves were with him.

Q Was anything said about advertising your county?

A Well, I don't remember whether they did or not, to tell the truth about it.

Q What did you give Mr. Pierce the ten dollars for?

MR. GWINN: If your Honor please, I object to the question.

THE COURT: Yes, that's right. Let the witness describe what took place between him and Mr. Pierce and not what he thought.

GENERAL McCLANAHAN: That's what I asked him, Your Honor, what did he give Mr. Pierce the ten dollars for.

THE COURT: And I have ruled on the question.

Q Was anything said to you about advertising on that occasion?

A Well—

MR. GWINN: The witness has said he did not remember and I object to the question further on the ground that it is leading.

THE COURT: I think that's a leading question. Objection sustained.

Q Did you buy twenty weekly editions of the Huntsville Daily Register?

MR. GWINN: If Your Honor please, isn't that the same question?

THE COURT: The point he is making, General, and I think it is well taken, is that it is not for this witness to state his conclusion. That's what counsel objects to.

Q Did you receive any papers after that?

A Yes, sir.

My name appeared in the paper. I lived in the Mt. Zion Community, near the Baptist Church there. This appeared in the Huntsville paper: "C. H. and D. B. Witt, planters and live stock" D. B. Witt is my brother. I don't know where the check and the receipt are.

CROSS EXAMINATION:

The receipt when he read it was printed on the bill head of the Huntsville Daily Register and there was nothing to keep me from reading it at the time Mr. Pierce gave it to me. I testified at the Magistrate trial here in Medina a day or two after this transaction occurred.

Q And you were asked the question as to what he said about the government and you answered that you did not remember him saying anything about the government; that was your testimony at Medina?

A All that was said about the Government was that every dollar we put in this TVA unit the Government would match it.

Q When the matter was fresher in your mind, I will ask you if you did not testify at Medina that you did not remember him staying anything about the United States government at all?

A Ask that again.

(Question repeated by reporter)

Q Was that your testimony at Medina?

A I don't remember. That was a long time ago and I don't remember. I remember that he told me what I would invest in this that the government would match it. If I put up ten

dollars the government would put up twenty dollars.

Q Didn't he say "we" will give so much if the county will give so much and you construed that as reference to the government? That if the community donated so much "we" will contribute so much; isn't that what he said?

A That has been so long ago that I couldn't swear to that. He told me—

Q You just—

GENERAL McCLANAHAN: Just a minute. You started to say what?

THE WITNESS: He told me the Government would match it.

Q But you wouldn't say whether he said the government or "we"?

A (No response heard)

THE COURT: How did you answer that? Did he say the government or "we" would match it?

THE WITNESS: As far as I remember he said the Government.

Q I understood you to say that you wouldn't say positively because it had been so long?

A You mean I wouldn't be positive about the government?

Q Yes.

A Well, it has been so long ago I wouldn't state positively either way.

Q I will ask you if the 14th question—in order that you won't misunderstand the question, I will read it to you and let you look at it also. Have you got your glasses?

A I don't use glasses.

Q I will ask you if you were not asked this question and didn't make this answer:

"Question 14: What did he say about the United States Government?

Answer: Well I don't remember him saying anything about that."

Q Were you asked that question and did you make that answer?

A I don't remember whether I did or not.

Q You don't remember whether you did and wouldn't say if you didn't or did?

A No, sir.

Q The matter was fresher on your recollection then?

A What is that?

Q It was fresher on your recollection two days after it occurred than it is four years after?

A Yes, sir.

Q And you have heard a great deal of talk and discussion about this case?

A Yes, sir.

Q And you have talked it over with several witnesses: That's true?

A Yes, sir.

Q Who was with Mr. Pierce when he called on you?

A Mr. Roach and Reau Graves.

Q How did he address you when he was introduced?

A He called me Cale Witt; said "How are you, Cale?"

Q Aren't you basing that on what somebody else has said about how they were greeted by him?

GENERAL McCLANAHAN: That's argumentative, your Honor.

THE COURT: I don't think that particular question is argumentative, General.

Q Mr. Witt, didn't you testify on the former trials that he greeted you as "Mr. Witt?"

A And called me "Cale."

Q But when he was introduced he called you Mr. Witt?

A Yes, sir.

Q Then started calling you "Cale?"

A Yes, sir.

Q Did they have a bunch of papers that looked something like that bundle (indicating bundle of papers)

A Yes, sir.

Q And they were copies of the Huntsville Daily Register?

A I didn't see them; I didn't notice.

Cale H. Witt

Q He read to you a letter of identification, describing him and the nature of his work?
A He read me a letter.
Q Yes, read a letted in your presence?
A Not that I remember of.
Q He didn't tell you he was a newspaper publisher?
A He told me he was editor of a paper.
Q And he was using this bundle of papers to demonstrate the character of work he had done in other counties?
A There was a bundle of papers.
Q And they demonstrated that to show you the nature, the character of the work they were doing?
A Yes, sir.
Q And who held the papers?
A Mr. Roach.
Q And Mr. Pierce turned them?
A I think Mr. Roach turned them.
Q They did that so you could see the character of advertising or write-ups they were giving the different communities?
A I don't know what they were doing it for.
Q But they did make a demonstration?
A Yes, sir.
Q And they turned them back this way (demonstrating)? They didn't roll them over and over, around?
A They were turning the newspapers.
Q Used them to demonstrate; and now, Mr. Witt, did he tell you where he lived?
A I don't remember whether he did or not.
Q Didn't he stress to you the importance of the community organizing? Didn't he tell you he was there trying to interest the people in cheaper power, lower taxes and better roads?
A Yes, sir.
Q And trying to promote community organization and advertising along that line?
A Yes, sir, he said we needed it.
Q And he wanted you to make a contribution that would promote these things,—better roads and lower taxes?

A He wanted me to buy units in TVA.

Q Did you ask him what a unit was?

A No, sir.

Q Did he say "TVA" or "units?"

A TVA units.

Q That's what you understood?

A Yes, sir.

Q What did he say?

A He said he was selling units in TVA and wanted to sell them in the interest of electricity.

Q And you recall, after all these years that he said TVA instead of units?

A I won't forget that; I paid ten dollars for one.

Q You didn't know what it was?

A I thought I did, but I didn't.

Q How long did he talk to you?

A Not so long.

Q A few minutes?

A Yes, sir.

Q And he gave you a receipt at the time you gave him the check?

A Yes, sir.

Q And you don't know what became of that check?

A No, sir, I have lost it.

Q Nothing to keep you from reading what was on that check?

A No, sir.

Q Nothing to keep you from reading the receipt?

A It was a ten dollar check.

Q You could have read the receipt?

A But I just signed the check for $10.00 and handed him the check and he handed me a receipt.

Q And when you read that receipt you had no difficulty in understanding what your contribution of $10.00 was for?

A I knew then what I bought.

Q It was perfectly plain?

A Yes, sir.

Q And there was nothing to keep you from doing that at the time you gave him the check?

A No, sir.

(COUNTS 4 & 5)

HARRIS H. UTLEY, duly sworn, testified as follows:

I live on a farm, I am a Rural Mail carrier. I know the defendant, J. E. Pierce and was introduced to him by Reau Graves when they came to my home in Gibson County in May, 1935.

Q Go ahead and tell the Court and Jury all the facts about your meeting Mr. Pierce and the conversations, if any, that took place between you?

A He came in, it was about night, Mr. Pierce, and then drove up; I was washing off the radiator of the car and they stopped their car 100 feet or more away and I saw them coming and I met them about half way. Mr. Pierce said "You're a mighty hard fellow to find at home; this makes three trips we have been out to see you," and I said, "Yes, I had to go to Jackson this afternoon," and Graves introduced Mr. Pierce and Pierce introduced Roach, and he said, "We represent—" Mr. Pierce said "We represent TVA, Muscle Shoals Power and sell TVA units of $10.00 a unit.' He says "We put up dollar for dollar for each dollar the people put up." He said, "We are going to put a line through here." I asked him about the people that were not interested, and he said he didn't know when they would ever get it. Mr. Roach had a bunch of papers, looked like four or five Commercial Appeals, and Mr. Pierce put the stack on his arm and Mr. Roach put his fingers between the papers and he was unfolding the papers and showing me where he had worked different counties, Dyer County. I could see Dyer County on the headline, and he was telling me how he had worked and he said he had three or four more counties to work back and then he would work through the line and get the power through in about six months.

Q Get power through in six months?

A About six months. I asked him—he said "you should buy at least five units, $50.00, five units. I told him I wasn't interested and started away, and around my place I have a gravel road, and he said he understood I was a mail carrier and he asked me about how much gravel it was and I told him forty percent dirt, and he said, "I think we can get gravel for you right away," and I turned and asked him who was taking stock and started over on this side, and he said Clarence Luckey and Joe Luckey and Cale Witt and other people, and I said, "Give me ten dollars worth" and I went in the house to get the money and he was writing a receipt, and I came back with the ten dollars, and he asked me about a share for my wife, and I said no, and he ased Mr. Roach, "Have we enough in the treasury to buy a share for his wife?" and Mr. Roach says "Uh-huh," so he put something on the receipt, Mrs. Ruth at the top of the receipt, and folded it up and I gave him the ten dollars and he handed me the receipt and he said, "Good bye, I hope you get a load of gravel rightaway," and they made a break for the car and that aroused my suspicions—made what I would call a quick get-away.

MR. GWINN: I am going to object to "arousing his suspicions and making a quick get-away."

THE COURT: The jury will disregard that.

A (the witness continuing) Mr. Pierce had to run to get in the car and so did Graves, and Roach had the car started and I hollered and said, "Wait a minute, give me your address," and he said "It's on the receipt," and I went into the house and lighted the lamp and it looked like "2". It was supposed to be units or something, that D&S and I made out the "D&S" and I thought that was daily and Sunday and then the 5 mos., and I didn't understand the "sub" and "pub". There hadn't been any paper mentioned and I didn't know what "sub" or "pub" was.

Q How did you pay him?

A With a ten dollar bill.

Q When did he give you the receipt?

A After I gave him the bill.

Harris H. Utley

Q How long did he remain after he gave you the receipt?
A Just said "good bye" and waved.
Q In what manner did he hand you the receipt?
A He had it folded up.
Q I will ask you whether or not this is the receipt that you got from him? (Hands witness paper)
A Yes, sir, that is the receipt.
Q What does it say the money was for?
A It says "May 21st. Two—one unit TVA works, I thought it was TVA works, and then I saw it was "20 weeks." I had asked Mr. Pierce if a mail carrier's credit wasn't good and he said no, he had to wire the money in every night.
Q Did he say who to?
A No, sir, but I heard him tell my neighbor who to.
Q Who is your neighbor?
A Mr. Luckey.
Q Which one?
A Joe Luckey.
Q What did he tell Mr. Luckey?
A He told Joe that he wired the money to Washington every night. He told him he couldn't give him his ten dollars.
Q Where was that?
A At Medina.
Q At the trial?
A The first trial. I didn't tell that before because I didn't think a conversation between other two parties was admissible. I didn't know it was.

GENERAL McCLANAHAN: I want to introduce this.

THE COURT: Let it be received.

(Exhibit 4 received in evidence)

Q Was anything said to you about your having anything to advertise in the newspapers?
A No, sir, nothing at all.
Q Did you receive a newspaper from Huntsville, Alabama?
A I received three or four copies of a little paper and I refused it. I hadn't bought any paper.
Q Did your name appear in the ad?

A Yes, sir, my name was in there some way.

Q Harris Utley, Planter and Mail carrier. Mrs. Ruth. Beautiful country home."

A That sounds like it.

Q That was in there?

A Yes sir.

Q Did you give him the name of your wife?

A Here it is. Yes, sir. I gave him the name of my wife. He asked me to give it to him. He said we had a mighty pretty home and asked me to have a snap-shot made and send to him.

CROSS EXAMINATION:

I gave Mr. Pierce the name of my wife and he wrote it on top of the receipt. I didn't tell him anything about myself and no mention was made of any newspaper.

I read my testimony in the first trial one time. I skimmed over it twice. There was an error in it to which I have not called your attention before.

Q All right, I will read it to you and you may correct that error.

A I can prove where it was wrong.

Q You are testifying; I am not

"Question: Detail to the jury just how these gentlemen approached you—what they said?

Answer: They came up—I was about—they stopped I reckon 120 feet from where I was. It was just about night. That was the third trip they had made to see me. And they came up and said 'you are a mighty hard man to find.' I said 'yes, sir; I had to go to Jackson this evening and was rather late getting back.' They came up and Mr. Graves introduced Mr. Pierce and Mr. Pierce introduced Mr. Roach to me. They came up and he said 'I understand you are a mail carrier.' I said "Yes, sir, I am.' He said how much of your route is dirt?' I said there was around forty miles of it dirt—"

The witness: That should have been 40 per cent.

"—he said 'wouldn't you like to have it all graveled?' I said 'Yes, sir; I think I would.' He said 'I think we can get it graveled for you in a very short time.' He said 'we are representing the TVA Muscle Shoals power. We put up dollar for dollar. Every dollar the community people put up we will match it, and we will have these lines through here—this current.' He said they would have it through there within six months' time—all the communities that was interested in it. I said 'The communities not in it, what about them?' He said 'I don't know how they will get in.' He said 'we are selling these units at $10.00 each, and a man of your standing ought to buy at least $50.00 worth—five units.' He went on, and he had some papers—Mr. Roach had some papers, so Mr. Pierce hung his cane on his arm and Mr. Roach handed him some papers that looked about the size of the Commercial Appeal's big Sunday paper. He had several of them, and he turned them over and showed me where he had worked in the counties back in this part, back all the way, and just the counties back in this part, back all the way, and just lacked about three more counties down this way. And then he said 'we are starting to put up lines as soon as we get the work through.' I said 'all right. It sounds mighty good to have the power. He said 'you have a pretty beautiful home, a beautiful home, about as pretty as I ever saw. Do you have a snapshot of it?' I said 'No, I haven't a snapshot of it.' He said 'I would like to have one made and you send it to me.' I said 'that's the only chance—to have one taken. I certainly don't have one here!' He asked me then about buying the paper. I told him 'well, I'm not in shape to buy.'

A That's the TVA, not the paper.

Q You didn't correct that before.

A Yes, sir.

Q Sir?

A Yes, sir, I corrected, that. There wasn't anything said about me buying a paper.

Q Didn't you state positively and unequivocally on the first trial that he asked you to buy a paper?

A Well, I called you on the 40 per cent.

Q What forty per cent?

A About the road.

Q You are very positive and can't be mistaken, that in your testimony nothing was said about buying a paper?

A I told you that was wrong.

Q You are positive about that?

A Yes, sir.

Q There is no possibility of your being mistaken?

A I corrected it.

Q (reading) "I told him 'well, I am not in shape to buy.' I said 'how about a mail carrier? Isn't his credit any good?' He said "No, we have to wire the money in every night.' He said 'you ought to take five units anyway.' I told him 'No, It had me too near broke.' I don't care to buy at all. He started off and turned back—"

A I started off; he didn't start off.

Q (Continuing to read) "—and I said 'who is taking stock in this thing anyway?' He called off the names of the Iuckey boys on this side, John Winston, Riley Galeford—"

A I never heard of Riley Galeford before. You can ask anybody living down there if they ever heard of a Riley Galeford.

Q Did you correct that before?

A You skipped it before. You said the Luckey boys.

Q continuing to read)—"on the other side, and a lot that I knew, and so I said "give me $10.00 worth.' I went in the house to get the money and he wrote a receipt, all but the name. When I came back he asked me how about buying one for my wife. I said 'no, that's enough.' He said, 'Mr. Roach, you have enough money in the treasury; how about you buying one for his wife.' When I gave him the money it was near-

ly dark and I couldn't see the receipt, but he put the money in his pocket. He put my name up there and asked me my wife's name. I told him Ruth. He put her name up there and folded it up and I gave him the $10.00 which he put in his purse and put it in his pocket, and he gave me a receipt. And Mr. Roach ran around to the car, and had it started and he hollered at me 'good by, glad to have met you,' and so forth. Reau Graves was standing about ten feet away, and he grabbed the door and jumped in. Mr. Pierce then run—He didn't run but walked fast and started to get in, and I said, "Mr. Pierce, where is your address? Give me your address.' He said 'it is on that slip of paper.' I said 'all right,' and turned and went in the house. I had to light a lamp, and I read the receipt. I misread it. It sort of looked like "8 unit-one Unit TVA Works." And had "hubh" or sub' on it. I said I know what D & S is—"Daily and Sunday.' Then thre was "5 mos." I said I was going to get it for five months time. So I thought I would get somebody to tell me about it. It didn't mention any advertising at all in the paper. I rather think it was sort of misleading. So the next morning I went around to see Mr. Rowlett—"

Q With the corrections made, that testimony is correct?
A One or two places.

JOE LUCKEY, recalled.

Q I will ask you if, at the Medina trial, these questions were asked you and you made these answers: :

"Question: You tried to get Mr. Pierce to give your $10.00 back to you?
Answer: Yes.
Question: He told you it had gone in to headquarters in Alabama, didn't he?
Answer: Yes.
Question: And you got very mad about it?
Answer: Not about that; I was mad because he came out there representing something, when he said it had gone in to Alabama, I thought that was just

like what he told me out there. I don't yet think it has gone in to Alabama."

Q You were asked those questions and you made those answers?

A Yes, sir.

(COUNTS 14 and 15)

FRANK BLACKMAN: Duly sworn, testified as follows:

I am a farmer, 36 years old. Live in Gibson County, Tennessee. I know the defendant, J. E. Pierce. He came to my farm in Gibson County in May, 1935. I was out in the field, sowing beans.

A When he was in about a hundred yards o fme, he said, "Hello Frank," and threw up his hands, and I didn't know who he was, and I went up there and Mr. Roach and Mr. Graves were with him, and I wanted to get through and I told him I didn't have much time to talk to him, and he talked to me a little bit about TVA and wanted to sell me some units and I didn't feel able to buy them and he told me that they would match dollar for dollar—

Q Who would match dollar for dollar?

A The government, and then I didn't feel like I was able to buy any, and I finally agreed to take one because I was interested in TVA, and after I decided to take one he talked to me a little bit and got me to take two, and I bought two units in TVA.

Q Two units in TVA?

A Yes, sir.

Q How did you pay him for that?

A Paid him with a check; I didn't have any money with me. Mr. Pierce had a blank check and wrote the check himself.

Q Who would match dollar for dollar?

A This Muscle Shoals power was to run a TVA line through there and of course I wanted it, and I thought if I could help get it in, and he said it would, and I wanted it anyway, and I just bought two units?

Frank Blackman

Q Who wrote out the check?
A Mr. Pierce.
Q Did you sign it?
A Yes, sir.
Q Is that the check? (hands witness check)
A Yes, sir.
Q Is that your signature?
A Yes, sir.
Q Did you read that check before you signed it?
A Well, he wrote it out; I don't know, remember whether he had a pad of nothing, or he had a board or something to write on, and he handed it to me and I saw 20.00 and I signed it.
Q Did you notice who it was made payable to?
A No, sir.
Q Did you notice the word "advertising" on it?
A No, sir, that wasn't on there.
Q Was anything said about advertising?
A When he got ready to leave he got off a little piece from me and sand, "Well, I'm going to send you an wspaper showing what we are doing in other counties." Of course, he had a newspaper showing me what they were doing in other counties. That's one reason I bought some TVA units, because I knew if they were getting it in other counties, I wanted it too.
Q Did he tell you that was the way to get it in Gibson County?
A Yes, sir.
Q Did he say you would get it—

MR. GWINN: That's leading and suggestive.

THE COURT: Objection sustained.

(At this point exhibit No. 5 received in evidence)

Q After you signed this check, did he tell you anything about a paper—before you signed the check?
A No, sir, before he got ready to leave, he had some papers with him that he unfolded.
Q Papers something like this (indicating newspapers)?
A Yes, sir, it had TVA on it up there.

Q TVA up there on it?

A Yes, sir.

Q Who was holding it?

A Mr. Roach.

Q Who did the talking?

A Mr. Pierce.

Q Did Roach do any talking?

A No, sir, he didn't say anything.

GENERAL McCLANAHAN: I want to introduce this.

(Exhibit No. 3 received in evidence)

Q Do you remember seeing "TVA" on there?

A Yes, sir.

Q Did you get a receipt?

A Yes, sir, he gave me a receipt.

Q How did he hand it to you?

A He just doubled it over one time and handed it to me and I stood there talking to him and I said I had to go back because I had considerable work.

Q Did you read the receipt at that time?

A No, sir, I wanted to get back to the field.

Q Did you ever read that receipt?

A Not until I went home and ate supper and then I pulled it out of my overalls pocket and I saw it was on a newspaper; I looked at it good then, and I knew I didn't want no newspaper; I didn't have nothing to sell and I called the bank and told them to stop payment on that check if he hadn't cashed it at a store. The bank was closed when he gave—when I gave him the check.

Q Was the check ever cashed?

A No, sir.

Q You stopped payment on it?

A Yes, sir.

I received the newspaper that he told me he was going to send me. I was raised on the place where I live, my grandfather and great-grandfather had owned it. And I told Mr. Pierce that. I didn't know he was going to advertise me as a live-stock dealer. I didn't have but three mules at that time.

Frank Blackman

Mr. Pierce stated that I had a good looking farm and he just carried on an ordinary conversation for five or ten minutes and told me that he was selling TVA units, Muscle Shoals Power, and that's when he told me if I would buy some the Government would match it dollar for dollar.

CROSS EXAMINATION:

Lawson Rowlett, Joe and Clarance Luckey, the Lewis boys, and myself all live in the same community. I did not have anything to do with employing Mr. Sherrod to try and get our money back, but he was employed by a group there. I was at the trial but I do not remember Mr. Sherrod examining me. I don't think I testified at the Medina hearing.

Q I will ask you if you did not state, in answer to a question by General Sherrod, speaking of the receipt?

> "Answer: I didn't read it, until last night. Somebody called me over the telephone.
>
> Question: That receipt — you really didn't know what you had, until last night?
>
> Answer: No, after I eat supper, I told my wife about it, and she said, 'let's see the receipt,' and I showed it to her."

Q Does that refresh your recollection of your testimony?

A No, I showed my wife the receipt all right.

Q I will read you one or two of the questions asked you, and your answers: speaking of Mr. Pierce:

> "Question: (By Mr. Adams) What did he say about Muscle Shoals?
>
> Answer: He said he was working in the interest.
>
> Question: Of Muscle Shoals Project?
>
> Answer: Yes, sir.
>
> "Question: You are sure you are right about that?
>
> Answer: Yes, sir.
>
> Question: And he said that he was interested in the Potential development in the lands of this community; he used the word 'poten al' "?
>
> Answer: I don't remember.
>
> Question: You don't say he didn't?

Answer: I don't say he did or didn't. He was talking Pretty fast. I was wanting to sow soy beans, and I wasn't getting all of it."

Q Did you make those answers that I have read?

A I don't know; I don't remember testifying, but I must have.

Q Now, Mr. Blackman, you do remember testifying in two trials here?

A Yes, I remember that.

Q And you were asked—I will ask you to listen to the questions and answers and state if this is not a correct statement of your testimony at the first trial in this Court; if you did not testify that Mr. Pierce said, "Well, this community has been allotted to raise so much money and we will match it dollar for dollar?

A Yes, he said something like that.

Q And that's what Mr. Pierce said, if the community would raise so much money, "We" will match it dollar for dollar?

A Yes, sir.

Q And you just jumped at the conclusion that he was talking about the government?

A Well, I knew he was because he said he was selling TVA units and Muscle Shoals power.

Q Did he say anything about the Muscle Shoals project?

A I don't remember whether he said anything about the project; I know he said something Muscle Shoals.

Q And he did discuss Muscle Shoals and told you he had long been interested in it.

A Sir?

Q He told you he had long been interested in that, didn't he?

A I don't remember whether he said a long time or not.

Q Mr. Blackman, you didn't look at that receipt, did you?

A Not at the time he gave it to me.

Q And he gave you the receipt?

A Yes, sir.

Q And you folded it up and put it in your overall pocket?

A Yes, sir.

Q There was nothing to keep you from examining it?

A No, sir, but he was talking to me and I was listening to him and I didn't even look at that receipt.

Q Did he tell you that he was sending you a newspaper?

A Yes, when he got ready to leave. He said--

Q Did he tell you how long he was going--

GENERAL McCLANAHAN: Give him time to finish his answer, Mr. Gwinn.

A (the witness) I don't remember whether he said ten or twenty weeks, but he said he would—he showed me what he had done in other counties, and he said they would have TVA in Shelby and Lauderdale and Obion counties; I saw that in the newspaper.

Q In other words, he turned those newspaper pages to show you and demonstrated the work he had done in those counties?

A Yes, sir.

Q And you saw the advertisements?

A I didn't see no advertisements. He wouldn't give me time to read them. He would turn them over and talk and I didn't see that fine print at the bottom but I could see the big printed top.

Q And from seeing "TVA" at the top, you reached the conclusion that it was a government enterprise?

A I was sure it was a government enterprise.

Q And you figured that TVA and cheaper power meant the same thing?

A I knew that TVA was cheaper power.

Q You identified in your own mind a program of community organization for cheaper power? You identified that in your own mind and reached the conclusion that it was a government enterprise; is that correct?

A No, sir, I knew that each community had to subscribe to something.

Q But you figured cheaper power and TVA were the same thing?

A No, sir; I thought TVA would be cheaper power, and I had been trying to get cheaper electricity for Medina, and I was trying to get this TVA so I could get it.

I do not remember his reading any letter to me or saying anything about being the publisher of a newspaper.

Q Did he tell you that he would match dollar for dollar any contribution the community would make.

A He said "they." Of course, he was talking to me about TVA, and he said match dollar for dollar, and he was representing them.

Q My question was, did he tell you that he would match dollar for dollar any contribution the community made toward this?

A No, sir, he didn't say he would.

Q Listen to this question, which was asked you at the first trial:

> "Question: And what did he say he would give you if you took one of these units?
>
> Answer: He said he would match it dollar for dollar."

Q Did you make that answer?

A He said "they" would; TVA; he was representing them to me.

Q Mr. Blackman, will you answer the question I asked you? I will ask it again.

GENERAL McCLANAHAN: I think he has answered it.

THE COURT: I will let him repeat it.

Q Was that question asked you, Mr. Blackman, and did you make that answer?

A What is the question?

Q Was this question asked you in the first trial of this case and did you make this answer;

> "Question: And what did he say he would give you if you took one of these units?
>
> Answer: He said he would match it dollar for dollar."

A I was asked a question something like that.

Q Did you make that answer?

A My answer would be something like that, but I don't re-

member whether I said "he" or they would.

Q You don't remember what you testified to in that connection?

A I don't remember whether he said "he" or "they" at that time. It was one of them.

I gave him a check and since I have read it I see it is payable to the Huntsville Register or bearer. I didn't read the check when I signed it. I just saw the $20.00 on there. There was nothing to have kept me from reading the check. It was plain daylight, around 5:00 o'clock, when I signed it. The receipt was on the printed billhead of the Huntsville Daily Register and I had no difficulty in understanding what it was for when I read it. Mr. Pierce may have stayed about 15 minutes.

Q And the check and the receipt were all parts of the same transaction in which you paid him the money?

A Yes, sir, I gave him a check and he gave me a receipt.

J. H. SIMPSON: Sworn, testified as follows: I reside on my farm in Medina, Gibson County, Tennessee. I first met the defendant at my home in May, 1935. I was out in the tomato patch and a boy called to me to come to the house. I started to the house and met Mr. Pierce, Mr. Roach and Reau Graves at a wire fence up from the tomato patch and Mr. Pierce said, "Hello, there Mr. John". I thought he was someone I knew but when I got nearer I knew that I had not seen him before. He was a great talker. Talked pretty fast and commented on the appearance of my crop and then went on and told me he was "Representing the Government selling TVA, for the lights to make our line, the line that we was looking to come through.

Of course, we were reading the paper and were all interested in it then, and he wanted to sell me units of course, and I didn't much want to buy right then. I told him I wasn't able right at that time. He said, "Oh, well, all of your neighbors are interested and all of your friends." He told me about the Luckey boys and Lewis boys and Witts and different ons around that had bought, and he says, "you know

you are going to help out in the community and the government will match dollar for dollar that you put in and you will get lights quicker and earlier than if there is nothing done." Of course, I was interested in it and wanted the lights if we could get them, and finally I told him I would take one, and he told me the different ones that were going to take so much, and he says, "you are as able to take them as they are and help get the lights" and he said it would just be $20.00 if I would take two, and that would be forty dollars if the government would match it and I finally agreed that I would take two, and he went on talking and said something about Franklin D. Roosevelt and him growing up as boys together and were great friends.

Q Did he say they were raised together?

A I can't say, but he said they come up as boys.

Q How long did he say he had known Mr. Roosevelt?

A Since they were boys about so high (indicating); talked like all his life.

Q Did he say anything else about President Roosevelt?

A No, sir, I don't think so. Just talked about first, asked years.

me what I thought of him. He said he had known him all these

Q And how did you pay for these two units?

A I gave him a check. I told him "I will have to see you after today." I didn't have my checkbook with me. I didn't have the money, and I said, "I haven't got my check book with me," and he said, "Well, that's all right, what is the name of your bank?" And I told him the Medina Banking Company, and he says, "I have a check book here in my pocket," and he got the book and wrote the check.

Q He had a blank check and wrote it?

A Yes, sir.

Q Did you sign it? Is that your signature?

A (examines check) Yes, sir, that is my signature.

Q Did you read that check before you signed it?

A No, sir, I did not.

Q Did you notice the word "advertising" on it?

A No, sir.

Q He just wrote it out, and how did he hand it to you?

A Just handed it to me on a book or a piece of paper. I didn't have any glasses and I didn't try to read it. I never thought about reading it. I thought that if that government man worked for the government, it would be straight.

MR. GWINN: I object to that.

THE COURT: Objection sustained to what the witness thought. He can testify to only what took place.

Q You never read the check?

A No, sir.

GENERAL McCLANAHAN: I want to make that an exhibit.

(Exhibit 7 received in evidence)

Q What, if anything, did he give you in return for the check?

A A receipt.

Q How did he hand you the receipt?

A Folded.

Q Show me about how he folded it. Is this the receipt? (hands witness paper)

A Yes, sir, I guess it is.

Q How did he fold it?

A It was something like this. (Witness demonstrates)

Q Did he give it to you before or after you signed the check?

A After I signed the check.

Q Did you read it?

A No, sir, not then.

GENERAL McCLANAHAN: I want to introduce this.

(Exhibit No. 8 received in evidence)

Q When did you read it?

A That night after supper.

Q You didn't read it until then?

A Not until after supper.

Q Was anything said about your receiving a newspaper, the Huntsville Daily Register, during your conversation?

A Well, now, I believe he said, when he got ready to leave, that he was going to send me a paper to let me see how they

were getting along and progressing in there.

Q Did he say anything about putting your name in the paper?

A Really, I don't think he did. He asked me if I wanted to advertise my farm?

Q What did you tell him?

A I didn't.

Q Did you receive this paper?

A One copy.

Q I believe you live west of Medina?

A About a mile west.

Q (reading) "John H. Simpson, Mrs. Eliza, Planter and Truck Gardner." did that appear in the paper?

A I guess so.

Nothing was said about advertising Gibson County in a newspaper in Huntsville, Alabama. I did not receive but one of these newspapers. I refused to take any more and told the postmaster to send them back.

CROSS EXAMINATION:

Q What did Mr. Pierce tell you that he was doing?

A He said he was representing the Government, selling units for the TVA.

Q Just what language did he use, as best you can recall it?

A When he come up there and told me he was representing the government?

Q Yes.

A Well, working to get lights in for the community; he said he was there approaching the farmers, he said, in each community. He talked like once he had been a farmer and he knew our hardships.

Q I am trying to get you to give me, as best you can recall exactly what he said?

A I will give it the best I can.

Q That's what I want.

A He was representing the Government and selling units in TVA.

Q Did he say he was selling TVA units or promoting the Muscle Shoals project?

A Selling units in TVA.

Q What did he say about Muscle Shoals?

A Well, he might have named Muscle Shoals, too.

Q Said he was selling TVA units in Muscle Shoals?

A I don't know whether he did or not. I wouldn't say now.

Q And what did he say about matching funds, if anything?

A He said he was going to match dollar for dollar.

Q How long ago has it been since you had this conversation with Pierce?

A It has been four years, I guess. I think it was May, 1935.

Q How shortly thereafter was it before you testified before the magistrate?

A At Medina?

Q Yes.

A Well, I don't know. It wasn't long after then.

Q There was a group of people in the Medina neighborhood, friends and neighbors of yours, who employed General Sherrod?

A Yes, sir.

Q And made an effort to get their money back?

A That's right.

The matter was some fresher on my mind when I testified at Medina than it is now.

A You state now that he said the government would match dollar for dollar. Didn't you testify before the Magistrate at Medina that he said the concern for which he was working would put up dollar for dollar—his concern; and isn't that the language used?

A Well, I don't know; I would not say. That's what he told me; the government would match dollar for dollar.

Q Did you testify before the Magistrate at Medina that he said the Government would match dollar for dollar, or that his concern would match dollar for dollar?

A I don't know how the question was put to me up there; but the government is what he said, anyway.

Mr. Roach had some newspapers there. It was about 2:30 or 3:00 in the afternoon. There was a wire fence between

Pierce and Roach and myself. Roach was right close to us. There was nothing to keep me from seeing what paper it was. Mr. Pierce told me he lived in Huntsville, Alabama. He read something I think he took a piece of paper out and showed me what he was representing. I don't think he read the letter (Exhibit 2) which you have read to me. I reckon his talk was somethin, like statements in that letter. He took a paper out to show me what it was, but I didn't have my glasses. I don't think he read all of that (referring to the letter) He might have done it. I don't say that he did not. His sales talk was the Government. I would not think the statements in this letter would be called the promotion of a government enterprise. I would draw a distinction between a Government and public work. I have heard this discussed at two or three trials.

Q Did Mr. Pierce say that he was a federal officer?

A I can't say that he did.

Q Or an officer of the United States Government?

A No, sir, I don't think so.

Q Did he tell you he was working in the interest of the government and promoting cheaper power?

A It seems that he did.

Q And that is about the substance of what he said, as best you can remember it, after the lapse of all these years?

A Well, he said he was working for the government. The TVA had been in the papers, that we were going to get the lines, and we were all as anxious as we could be to get it. He come along representing that and was going to bring it in, and that's the reason we all fell for it.

THE COURT: Mr. Simpson, we are limiting your testimony to what you did—not what somebody else did.

THE WITNESS: Yes, sir.

Q You identified cheap power as meaning the same thing as TVA?

A Yes, sir.

Q And you didn't think you were buying stock?

A No, sir, I thought if I done this I would get it in quicker.

Q And you knew you were making a donation to a community enterprise?

A And the government would put up dollar for dollar in that community. That we would get it quicker that way.

Q And to get those things you had to work together and organize? Didn't he stress that?

A I don't know; I wouldn't say.

Q Well he talked to you about better roads?

A Yes, sir.

Q And lower taxes and that he was interested in the development of the rural community?

A He just wanted to help the old farmer; give him life.

Q That wasn't the first time you had heard that kind of talk was it?

THE COURT: I don't think that's a competent question.

Q I will ask you to listen carefully to the questions and answers that I am going to read, and then I will ask you if you were not asked these questionsby your attorney, Mr. Sherrod, in the Medina hearing, and if you didn't answer them as I am reading them to you now:

"Question: Do you recall seeing this Mr. Roach here and Mr. Pierce over there yesterday or day before?
Answer: Day before yesterday evening.
Question: Where were you?
Answer: Tomato patch, when I was called out.
Question: Ever met them before?
Answer: No.
Question: What did they say to you when they came up?
Answer: Well, they just hollowed 'hello, John.'
Question: Is that your given name?
Answer: Yes.
Question: Then what did they do?
Answer: They said they was in here working in the interest of TVA.
Question: Did they want to sell you anything or not?

Answer: Some units for Muscle Shoals.

Question: Did they explain to you what a unit was?

Answer: No, really didn't.

Question: What did they propose to do if you would buy a unit?

Answer: They said it would help to get Muscle Shoals or the lights in here, and if I would buy a unit, why, they would give just as much as I would buy, the other in connection with it.

Question How much did you buy?

Answer: I bought two units.

Question: Paid them $20.00?

Answer: Yes.

Question: What did they do as soon as you paid them?

Answer: Handed me a receipt and was gone.

Question: Did they write that out before you?

Answer: Yes, right over the fence from me.

Question: What bank was your check drawn on?

Answer: Medina Banking Company."

Q Were you asked those questions?

A Yes, sir.

Q And made those answers?

A I guess so.

Q And that happened at a time when the matter was much fresher on your mind?

A Yes, sir.

J. T. MATHIS, being duly sworn, testified as follows:

I am a farmer and mail carrier, own my own farm and met the defendant, J. E. Pierce in May, 1935.

Reau Graves introduced me to Mr. Pierce and Mr. Pierce introduced me to Mr. Roach.

Q Go ahead and tell us what conversation you had with Pierce and Roach and Graves?

A All right. They come up there and I had been down to Henry Myers' house and Mr. Pierce started talking and he said, "Well—" I don't know, as I said before, whether he

said he was with the government, working with the government or for the government, but he was after cheap TVA power from Muscle Shoals, and so he began talking and said that he was there in the interest of cheap power, and asked me if I was interested in TVA, and he said, "We are going to bring a line through here and have got to get $2400.00, and whatever we get up this county has got to get up." I live in Gibson County, and he said "Gibson County has got to get that up and what you get up the government will match it," and I said, "Well, that's a government project, isn't it?" And he said, "yes, sir", and I said, "Where are your credentials? How do I know you are what you say you are?" And he took a piece of paper out of his pocket, and the paper he took out of his pocket was peculiar; it wasn't a plain sheet of paper, it had a peculiarity to it that made me notice it. I didn't read it word for word, I just skimmed through it, and it described Mr. Pierce as I would attempt to describe him myself if I was describing him by a letter; so I just handed it back, and in the meantime he told me—he had a folder there, a post-card like—you have seen post cards with pictures of different buildings? That he owned some of them and he said he owned an office building, and I didn't pay much attention and I didn't finish reading this paper because I saw it wasn't a government paper—he never did hand the card to me, but he handed me this paper, supposed to be his credentials, and when I handed it back, I said, "these ain't government papers," and he said, "You mean to say me, a Deacon in the Baptist Church, would tell a falsehood? And I said "Yes, that's what I meant." He said "You were recommended to me as a five farmer and I am sorry to leave you this way," and I said, "that is all right, I don't care how you leave me," and I don't know whether those was the exact words, and then he got ready and proceeded to leave me and there wasn't much more said between me and him.

Q Did you buy any?

A No, sir, he didn't have anything to sell me. TVA units

was what he said to me. He didn't explain to me what a unit was.

Q What kind of credentials did you ask him for?

A Government credentials.

Q If you will look at this (hands witness paper). Please state if that is the paper he handed you, or something similar?

A It is very similar, I haven't had it in my possession.

Q See if it reads sort of like the paper he read to you?

A (Examines paper) It reads very similar. I wouldn't attempt to say it is the same paper.

Q Does that look like the same paper?

A Yes, sir.

(The paper exhibited to the witness was the letter of identification. Government Exhibit 2.)

Mr. Roach had his arm full of papers. He had the papers on his arm this way. (Illustrating) Nothing was said about selling papers. I was at the trial at Medina and some papers were there. The card he showed me is very similar to the one you just handed me. (Thereupon, this post card folder was introduced as Government Exhibit 9)

Mr. Pierce did not have any credentials and since a man representing himself as selling TVA and being with the Government, and didn't produce any government credentials, I would have no dealings with him. He pointed out buildings on that folder, but said he owned one building.

CROSS EXAMINATION:

Mr. Pierce said he was selling TVA Units at $10.00 a Unit.

Q What did he say about TVA units?

A He said he was selling TVA units at $10.00 a unit.

Q You have testified twice in this case before, haven't you?

A Yes, sir, I testified I believe in December of 1935 and I testified in February of 1939.

Q And in your testimony in either of the former trials, did you say anything about his selling TVA units?

A Yes, sir.

Q You said that in your testimony at both trials?

A Yes, sir.

Q You are very positive about that?

A Well, he said in substance he was selling TVA units.

I sketched through the letter Government Exhibit—which Mr. Pierce handed me. I didn't read it word for word. I saw it described at the beginning and I knew it was not a Government credential and said to him, "That's not a Government credential, I state to the Court and Jury that in the presence of Reau Graves and Mr. Roach, Mr. Pierce told me this was a Government credential.

Q And you don't know how close either Graves or Roach were when you told Mr. Pierce that this was not a Government credential?

A About 20 or 30 feet.

Q Did you say it in about the same tone of voice that you are speaking now?

A Yes, not quite as loud.

Q You remember very distinctly you were speaking just about like you are speaking now?

A I have been asked to talk loud so the Honorable Court can hear, and I had been asked to talk loud, and naturally that caused me to raise my voice.

THE COURT: I want to thank you for it. I haven't had a witness testify in my court in several months that testified in a better tone of voice.

THE WITNESS: Thank you, Judge.

Q There was no reason why—you were talking in a loud enough tone of voice about a matter of that kind for Mr. Roach and Mr. Graves to have heard it?

A If they had been wanting to hear me they could have. If they had been interested in listening to me.

Q You were very emphatic in telling Mr. Pierce that this wasn't a government credential?

A Yes, sir.

Carl Robinson

(COUNTS 18 and 19)

CARL ROBINSON: being duly sworn, testified as follows:

I own a farm in Crockett County, Tennessee and live on that farm. The defendant, J. E. Pierce came to my farm in May or June of 1935. He drove up in front of my house, blew the car whistle, and as soon as I stepped out he threw up his hands and said, "Hello, there Mr. Carl." I thought he was someone I knew, but I had never seen him before. He told me his name was Pierce and "he said he was representing the TVA and wanted to sell me Units in the TVA.

A Well, after he went on talking, I made the remark that everybody had been talking TVA a good while and I had been expecting somebody around to see about TVA, and there he was.

Q Go ahead.

A He talked on about it, and I finally asked him how it sold, and he said ten dollars a unit and he talked me in the notion of buying twenty dollars worth.

Q Twenty dollars' worth?

A Yes, sir.

Q Who was with him, if you remember?

A A fellow named Roach and he introduced me to him later on.

Q How did you pay him?

A I paid him with a $20.00 bill.

Q Did you receive anything for that $20.00 bill?

A Well, he give me a piece of paper; he said it was a receipt.

Q How did he hand you that piece of paper?

A Well, it was folded up.

Q Did he fold it?

A I think he folded it when he took it out of his pocket.

Q Did he give it to you before you gave him the money?

A After I give him the twenty dollars.

Q How long did he remain there after giving you the receipt?

A Not long. Of course Mr. Roach come around and there was

a lot of papers hanging across the car and Mr. Pierce wanted to know if I wanted to advertise my place for sale.

Q Advertise your place for sale?

A Yes, sir, and I told him I didn't want to sell it, especially at the price I would have to take then, but if he wanted to advertise I wouldn't want to go clear down to Alabama; I would want to advertise close to home.

Q Did you have anything to advertise?

A No, sir, I didn't tell him I did, but he said he would advertise my place for me, and he wanted to know how many acres I had and I told him.

Q Did you buy twenty editions of the Huntsville Daily Register?

A No, sir.

Q Was anything said to you about the Huntsville Daily Register.

A Yes, sir, he was going to send me the paper.

Q What did he tell you about that? When did he tell you?

A After I had paid him $20.00 and got a receipt.

Q All right, what did he say about it?

A He said he would send me the paper and I would have my land advertised in the paper.

Q Did he send you that paper?

A I got a few of them. I wouldn't recall how many I got, but I was supposed to get it for three months, and I don't know how many I got now.

Q Did you give him any advertising in there?

A Not at all. He said he would advertise my place and he wanted to know how many acres I had and I told him, and before that he asked me what neighborhood it was, and I told him if it had any name I didn't know what it was.

Q Your neighborhood wasn't named?

A No, sir.

Q Did you receive one of the papers later on?

A Yes, sir.

Q What did he name your community?

A He named it Robinsonville. He asked me about naming it

that and I said, "that's up to you."

Q (reading) "Robinsonville. Carl A. Robinson. Planter and Live stock. Mr. Robinson offers 310 acres of land for sale, cash or terms. Post office address, route 4."

A I didn't authorize that at all.

Q You didn't authorize him to do that?

A No, sir.

Q You didn't have 310 acres for sale?

A I had it but not for sale.

(Exhibit No. 10 here received in evidence)

Q What did you do with that receipt?

A I don't recollect to save my life what I did do with it. In fact, I didn't look at it for sometime after that and when I did I couldn't read it right.

Mr. Roach and Mr. Connell a deputy sheriff were with Mr. Pierce when they came to my home but Mr. Connell was not close up there. No one but Pierce or Roach heard the conversation. They had a folder of papers and turned the pages of these papers and demonstrated with them the plan under which they were operating. I don't recall the name of the paper. I received a few copies of the paper but didn't get it for three months like he said. It had a write up on Crockett County, but I didn't think it had several pages of advertising devoted to Crockett County, if there was any advertising besides my place I don't recall. It seems like Mr. Pierce read a letter to me and went on to say he was a deacon in the church. Mr. Pierce never read any letter like the one you showed me. That first part he never read to me. He didn't read any part of that letter.

THE COURT: Did he read any part of that letter?

A No, sir, he didn't read any part of it.

Q Did he read any letter to you?

THE COURT: He has answered that, hasn't he?

MR. GWINN: Note my exception.

THE COURT: On what grounds?

MR. GWINN: I was asking him if he had read any letter to him.

THE COURT: I thought I asked him that and he answered that he had not read any part of the letter to him.

MR. GWINN: I asked him if he had read any letter to him.

A It seems like he did read some letter telling about him being a Deacon in the Church.

THE COURT: All right, go ahead. I understood you to be referring to this letter.

MR. GWINN: I certainly didn't intend to create that impression.

THE COURT: You have at times continued the questioning of a witness after I ruled.

MR. GWINN: I won't argue with the Court.

Q Did he tell you that he was the editor and publisher of the Huntsville Daily Register?

A I think so.

Q And did he read from that letter? What did he read?

A It might have been in the letter he read from.

Q Did you know what newspaper they were using to demonstrate this plan to you?

A This paper, the Huntsville, Alabama, paper.

Q And they turned several pages of that paper?

A Yes, sir. He would show me the front part of the paper in big letters.

Q And the type was in big box-car letters; you didn't have to get up close to read it?

A The front part was in big letters.

Q And you went over some 15 or 16 counties that they had gone over?

A I don't think so.

Q About how many?

A I don't recall.

Q You didn't read the receipt Mr. Pierce gave you for your money?

A I don't think I did for sometime.

Q When you did read it, it was on the billhead of a newspaper, wasn't it?

A I won't be positive about that.

MR. GWINN: Have you got one of those receipts there, Mr. McClanahan?

(General McClanahan searches through papers)

Q Where is that receipt?

A I don't know to save my life.

Q Was it on this kind of paper? (*hands witness paper*)

A I guess so; I wouldn't be positive. I don't know. It might have been.

Q You have no recollection of the kind and character of receipt or what was printed on the receipt, that he gave you?

A No, sir.

Q Mr. Robinson, you asked Mr. Pierce about whether you would get any advantage in the way of light or cheaper power for that $20.00 and didn't he tell you "no", it was just for advertising?

A Yes, sir, but that was after I had paid him the money and he had his hand on the car and was ready to get in the car, and I said "Will this $20.00 have anything to do with me getting lights? getting lights cheaper?" and he said "no, it is for advertising," and drove off.

Q Did you ask Mr. Pierce to wait?

A No, I—

Q Did you—

GENERAL McCLANAHAN: What did you start to say?

A I didn't have time to ask him.

Q You didn't say "Hold on there?"

A No, sir.

Q You said nothing?

A No, sir.

Q And let him go without any protest or complaint whatever with your $20.00?

A I sure did.

MR. GWINN: That's all.

RE-DIRECT EXAMINATION

BY GENERAL McCLANAHAN

Q I believe you said you didn't have time—

A I didn't have—

MR. GWINN: If your Honor please—

THE COURT: I think that is correct cross-examination Mr. Gwinn. You may explain why you didn't protest to the defendant.

A In fact, Mr. Roach had done started the car and Mr. Pierce stepped in the car and drove right off, and in fact, gentlemen, I am not educated and don't know a great deal, and I never thought of the man being frisking me out of $20.00 like he did.

THE COURT: You may examine him further, Brother Gwinn if you want to.

MR. GWINN: No, if your Honor please.

(The witness was excused.)

WILLIAM J. HAYES. By agreement, the testimony of this witness was read from the record in the first trial of the case, and is as follows:

My name is William J. Hays; I have recently moved to Memphis, Tennessee from Knoxville, and I am employed by the Tennessee Valley Authority.

The Tennessee Valley Authority is known as the TVA; its headquarters, under the Tennessee Valley Authority Act is located at Muscle Shoals. My title is Assistant Co-Ordinator. I have been with the Authority since July 2, 1934. It does not issue any stock or units for sale to the public.

On cross-examination by counsel for Pierce, the witness testified:

I am not the keeper of the records of the Tennessee Valley Authority; They are kept at Knoxville. It is a corporation, and has headquarters at Muscle Shoals, and also at Knoxville. It keeps duplicate records. There is a provision in the Act for the sharing of profits by the States of Alabama and Tennessee; it makes contracts with counties, municipalities, or individuals for the sale of electricity; it is not a stock company, and the law makes no provision for the issuance of stock. It is a matter of common knowledge that it is not engaged in the sale of stock; it employs between fifty and

sixty thousand persons; it does not include in its reports to Congress and to the President employees who receive $1500.00 or less; these are not mentioned in detail in such reports. We have a number of engineers who go out and explain the possibilities of TVA power contract. We are actively organized for the formation of rural associations, and as a part of our program of rural development the Tennessee Valley Authority has an organization for the making of contracts by municipalities, and for the extension of electric power lines from the towns out into the rural communities, and that is one of the activities of the corporation, and a part of our work is the interesting of communities of the sale to communities of such power. We have TVA people who are made available to towns when they show an interest in it, to tell them about it, and to tell them in what way they can promote this work themselves, and to tell them the advantages of electrification to the rural communities. That is part of our program; extending power lines to the rural communities to give lights to the farmers that do not have electricity is part of the work we are doing, and we have a few employees who are acting as advisors to any rural group, which wants our services. It is the citizens who are urging this, rather than TVA, but it is doing some promotion work. It furnishes information of all its activities to the newspapers, and sends such information from time to time to the papers for whatever use they want to make of it.

On Cross-examination, by counsel for Roach, the witness testified:

Dr. R. K. Morgan is Chairman of the Board of Directors, and Dr. Hartford C. Morgan is a Director and David E. Lilienthal is a Director. They have a Secretary who lives at Muscle Shoals, Alabama. The Board keeps minutes. The custodian of its records is a man by the name of Blanford.

On Redirect Examination, by Counsel for the Government, the witness testified:

The Tennessee Valley Authority does not require com-

munities to put up half the cost of bringing the Power in to the community, nor agree to pay the other half; all the expenses of the Tennessee Valley Authority are paid by the United States Government, and it does not sell stocks or units, or require people to appropriate their own money.

On Recross-examination, by counsel for Pierce, the witness testified:

Community activities, or the organization of community clubs, is not financed by the Tennessee Valley Authority, but by the Communities, if they get it done. I never heard of TVA units except in connection with this particular case, and do not have the slightest idea as to what TVA units are.

At this point it was stipulated and agreed in open Court and in the presence of the Jury, that the defendant J. E. Pierce was not any time during the period covered by the indictment an agent or employee of the Federal Government or the TVA, nor a representative of the Federal Government nor any department thereof, and had never been a representative of the Government or the TVA, and the court instructed the Jury to consider this stipulation as evidence.

J. B. CHERRY, sworn, testified as follows:

I am 60 years old, am a farmer and live stock dealer, live on my own farm in Crockett County, Tennessee, and was a deputy sheriff of that county when I met the defendant Pierce close to my home in June, 1935.

I was travelling in a car, and so was Mr. Pierce. He threw up his hands (illustrating) and said "Hello, J. B." That is my initials.

A He came up pretty close to my automobile and introduced himself as Mr. Pierce. I said to him, "You have the advantage of me. I don't know you." He kept talking so friendly. I said, "You have the advantage of me. I don't know you, and still don't know you." Then he introduced himself to me. He told me the purpose he was there for—there in the interest of the Government, selling the people of Crockett County TVA units or stock.

J. B. Cherry

Q Selling TVA units of stock?

A Yes, sir.

Q All right; go ahead.

A He said it meant cheaper electricity, good roads, good schools, and to develop your county—Crockett County. I said to him, "I have a light plant of my own; I wouldn't particularly need electricity." He said, "Cherry, are you going to be a slacker, and not act with your neighbors and friends," and he then told me how many men in my community had already bought stock—turned over a sheet and showed me quite a number of men—my neighbors, my friends, in Crockett County, Dyer County, and other counties, that I knew, and always had. Had a deputy sheriff with him from Crockett County, and I said to him, "Yes; I will take some stock with you." He tried to sell me a hundred dollars worth, and I said, "No, sir; I won't buy that much, but I will buy twenty dollars worth;" and I did buy twenty dollars worth of TVA units.

Q $20.00 worth?

A $20.00 worth.

Q How did you pay him?

A I gave him a check.

Q Who wrote out the check?

A Why Mr. Pierce wrote the check.

Q Who furnished the blank?

A Mr. Pierce furnished the blank.

Q You signed it; did you not?

A Yes, sir.

Q Is that your signature? (Presenting paper to the witness)

A Yes, sir.

Q Mr. Pierce wrote out the rest of it?

A Yes, sir.

Q Did you read it before you signed it?

A Yes, sir.

Q Is there anything on there now that was not on there then?

A That word "advertisement" was not on there.

Q You read it over carefully?

A Yes, sir.

Q You are sure about that?

A Yes, sir.

He (Pierce) wrote a check and I signed the check and "then he wrote me a receipt and folded the receipt up and handed it to me . . . He said "here is a receipt" and handed it to me about this way, and I just folded it and stuck it down in my pocket,"

I did not read the receipt. "I never one time dreamed that a Government man would fake a man. I thought it was O.K.—saw my neighbors and friends' names there, and he had the deputy sheriff with him. I read the receipt the next morning. He remained about five minutes after he gave me the receipt.

Q Did he give you a receipt after you had signed the check and given it to him, or before?

A He gave me the receipt as he was leaving. I gave him the check and then he wrote the receipt and gave to me, and I put it in my pocket, and he drove away.

Q Did you buy twenty issues of the Huntsville Daily Register on that occasion?

A No, sir.

MR. GWINN: I object to that.

GENERAL McCLANAHAN: It is cross-examination. The defendant is trying to prove that he sold that on that occasion.

THE COURT: Well, of course, what he is getting at is the conclusion of the witness. You might ask him what he did buy on that occasion.

Q What were you buying?

A I was buying TVA units of stock.

Q Was there anything said to you about a newspaper on that occasion?

A He said he had a paper—that he was at the head of some pa per in Alabama.

Q When did he tell you that?

A Sometime during the conversation.

Q Did you receive a paper from Alabama, after that?
A Yes, sir.
Q About how many did you receive, if you remember?
A I don't remember, General. Several, I think.
Q Was there anything asked you about advertising on that occasion?
A Well, he said did I have some land I would sell, and I said "Yes, I have a couple of tracts of land I would sell." I didn't care to sell, but if I got a good price I would sell it.
Q And what else, if anything?
A Well, he went on and said—he said so much it is hard for me to tell you what all he did say.
Q I will ask you if that looks like one of the editions of the paper that you received?
A (after examining paper) Yes, sir.
Q Did you have an advertisement in that paper?
A I didn't have one in there; but, he put one in there.
Q What community do you live in, in Crockett County?
A Down close to my home, down there is Chestnut Bluff—don't have any name.
Q Chestnut Bluff. Your community didn't have any name?
A No, sir.
Q I will ask you, in this edition, Dyer and Crockett Counties under the headlines of Cherryville—is your Community named Cherryville?
A No, sir.
Q Did you name it "Cherryville"?
A No, sir.
Q How did it acquire that name of "Cherryville"?
A Mr. Pierce gave it that name, I guess.
Q Did he say anything on that occasion about it? Did you tell him it was named Cherryville?
A No, sir.
Q Had it ever been named Cherryville?
A No, sir; don't go by that name now.
Q "Deputy Sheriff, Jno. S. Cherry, Planter, with 40 or 50 acres tracts of land. Will sell for cash or on terms. Mr. Cherry says he is a candidate for Sheriff two years hence; but, in

the present race he is for the capable and efficient incumbent, Sheriff A. Q. Montegue."

Q Did you tell him you were a candidate for sheriff on that occasion?

A No, sir; he came down to my place, and knew more about the sheriff of Crockett County and who was going to run than I knew. I wondered how he knew all about that, when he got to my place.

Q Did he say anything to you about the "Sheriff"?

A I told him—Mr. Montegue—we were both in the race, together—Montegue ran and I quit the race. I was for Montegue. I wasn't no candidate for Sheriff.

Q Who brought up the candidate for sheriff; you, or Pierce?

A Mr. Pierce brought it up.

Q Tell us how he brought it up?

A He said "You are the next man that is going to run for Sheriff of this county." I looked at Pierce and wondered how he knew I was going to run for Sheriff. He came there with that news when he came to my place.

Q Did you tell him you were a candidate at any time?

A No, sir.

Q Did you authorize him to announce you as a candidate for sheriff or in any capacity?

A No, sir.

GENERAL McCLANAHAN: I want to file this as an exhibit. I will mark this "Cherryville", so that I won't have any trouble finding it when I go to look for it.

(The paper was accordingly marked "Exhibit C-13-3" and will be found among the exhibits hereto.)

Q That was in Crockett County, Tennessee?

A Yes, sir.

CROSS EXAMINATION:

Q Who was present at the conversation with Mr. Pierce?

A Mr. Roach and Mr. Connell, Deputy Sheriff. The following day I went to Alamo and had a warrant sworn out and had him arrested.

Q When did you read your receipt?

A The next morning. That is when I found out.

Q Did you swear out a warrant after you read the receipt, or before?

A Yes, sir; after.

I am not a deputy sheriff now, but was when Mr. Pierce saw me in 1935.

I never announced myself a candidate for sheriff.

I was contemplating making the race but that was before Mr. Pierce came to my place.

I did not make the race. "I never got into it. I just quit. We were both good friends and I quit, and the other man run the race. I never got in it. Mr. Pierce said "If you want to run for Sheriff, I'll be with you." I said, "I never made my mind"—Mr. Pierce discussed my making the race and knew more about it than I did. He discussed it with me. I do not know whether I said anything one way or the other.

Mr. Pierce asked me if I had any land I would like to have advertised, and I said, "You can advertise it if you want to." He told me he was going to designate our community as "Cherryville, and told me that he was going to send me a newspaper but I do not remember how long I was to receive it.

Q He sought a contribution from you of $100.00?

A He asked me to take that much stock; $100.00; yes, sir.

Q He asked you to buy $100.00 worth of stock, you say?

A Yes, sir.

Q Did he exhibit to you any stock certificates?

A No, sir.

Q Isn't this what happened? He asked you to take part to the extent of $100.00 in the work in which he was engaged?

A No, sir; he never said that to me.

Q Just what did he say, then?

A He said he was representing the Federal Government; selling TVA Units, and he wanted to sell me $100.00 worth of them. That it what he said to me.

Q He didn't offer to sell you any stock?

A The same thing. Units, or whatever you call it.

Q You understand the difference between the words "unit" and "Stock"?

A There might be some difference.

Q Which did he say; "stock", or "units"?

A He said "units".

Q Then, when you stated to the Jury that he offered to sell you stock you were in error?

A Well, that has been three years ago, and I might not quite just exactly—you don't remember three years what you said to a man, and what he said to you.

Q I am sure of that.

GENERAL McCLANAHAN: Let him finish.

THE WITNESS: I am testifying to the truth, Mr. Gwinn. If I make a little error, I don't aim to tell no wrong. I aim to tell the truth.

Q You would not pretend to give to this Jury, now, the exact language Pierce used in any part of his conversation three or four years ago?

A I can give it pretty straight, Judge Gwinn.

Q That wasn't my question.

THE COURT: I think he answered it. Go ahead.

MR. GWINN: We want to note our exceptions, Your Honor.

THE COURT: Note your exceptions.

Q Now, Mr. Cherry, did Mr. Pierce have any newspapers there with him on that occasion?

A Yes, sir; he had some newspapers with him.

Q And, he told you he was editor and publisher of the Huntsville Daily Register, he told you that?

A He said he owned a paper—editor of some paper in Alabama.

Q And exhibited to you there on that occasion copies of that paper? He had the paper with him?

A Yes, sir.

Q And you saw the names of people in other counties who had joined in the program, and whose names appeared in the paper; didn't you?

A I saw some other men's names that I knew.

Q And those papers were turned there, by Pierce or Roach, and you saw the work they had done, or that had been done in other counties?

A Yes, sir; I saw—the paper was turned; I remember that.

Q That was in plain, broad day-light?

A Yes, sir.

Q Now, Mr. Cherry, in turning these papers, showing advertisements of other counties, Did they turn them fast, or slow?

A I don't remember.

Q You didn't ask for them to slow down, though; did you?

A No, sir; I never asked them to slow down.

Q There was nothing to keep you from seeing, or reading the advertisements of other counties if you had wanted to?

A No, sir.

Q And you say that you gave Mr. Pierce a check?

A Yes, sir.

Q To whom was that check payable?

A I don't remember. I think it was payable to Mr. Pierce. I am not sure.

Q I didn't get the last part of your answer?

A I said, "I didn't know, sir. I thought I was making the check payable to Pierce. I don't know who it was made payable to, though.

Q Well, you read the check before you signed it?

A The check is here; you can look for yourself.

Q Mr. Cherry, this check is payable to the Daily Register, isn't it?

A Yes, sir.

Q And you didn't notice that when you signed it?

A No, sir; I don't know as I noticed it when I signed it.

Q Mr. Cherry, if you didn't notice to whom the check was payable, how could you testify now, if you didn't read it, that the word "advertising" wasn't on it?

A I looked on the check, but just who it was made payable to, I am—I think I read—he represented the Government,

gentlemen, and I never dreamed nothing being wrong with the matter. I thought the gentleman was in good faith; I didn't question it.

Q You have told that several times. I am asking you why—if you didn't read the check, how can you testify to this Jury, today, four years later, that the word "Advertising" wasn't on that check, when you signed it?

A I don't think that has been four years.

Q How long has it been?

A 1934.

Q Don't lack much?

A It isn't four years, though; is it?

Q That is correct, if it was in June, 1935. Now, Mr. Cherry, he gave you a receipt; didn't he?

A Yes, sir.

Q And gave you a receipt before you gave him a check?

A I gave him the check first.

Q Are you sure about that?

A Yes, sir; sure about that.

Q If that is true, Mr. Cherry, why did you testify in the first trial that he gave you a receipt first?

A Have you got the evidence there, that I testified that way?

Q I will ask you to also look at that and listen as I read that, "Q Now, did you get this receipt from Mr. Pierce before, or after, you gave him the money—the check?" Answer: I got the receipt. He gave me the receipt, and the check was the last thing he got from me. Question: He gave you the receipt, and you handed him the check? Answer: Yes, sir." Were those questions asked, and did you give those answers? In the first trial of the case in this Court?

A I guess I did; you got the record there.

Q Then you are in error when you say you gave him the check before he gave you the receipt?

A I was in error there. I didn't testify right. I am telling you the truth about it, now; and, I was telling the truth then.

Q What explanation have you got, then, as to why you were in error—

A (Interrupting) Because—

Q (continuing)—so shortly after the matter occurred?

A Because you brought it back to my memory; that at the time I testified I could have been honestly mistaken.

Q It is barely possible you could be honestly mistaken again, about what you have testified here today?

A I don't think so.

Q When did you read this receipt?

A Next morning.

Q When did you swear out a warrant for Mr. —

A (Interrupting) Same day.

Q And you swore out the warrant before you read the receipt?

A No; I read the receipt at home, and then I had to go fifteen miles to the county seat.

Q Didn't you swear out a warrant the same day you gave the receipt?

A No, sir.

Q Have you got the affidavit—there has been some reference to it.

A Get your affidavit. I swore out the warrant the next day.

GENERAL McCLANAHAN: That is a state proposition. I had nothing to do with that.

Q You brought a civil suit, also, against Mr. Pierce?

A Sir?

Q You brought a civil suit, also, against him, to recover your money?

A Yes, sir.

Q Now, Mr. Cherry, what sort of an examination did you make of this receipt, when he first gave it to you?

A I just looked at it. I was in a hurry, and it seemed like Mr. Pierce was in a hurry, along about 10:30 in the day—pretty warm weather, and I looked at the receipt and stuck it in my vest pocket, and drove on home.

Q Mr. Cherry, the name "Huntsville Daily Register", is in large black type on that receipt;" isn't it?

A Yes, sir.

Q Do you think a man could glance over that without see-

ing it was on a newspaper bill-head?

A Well, there is quite a lot of writing. I just looked at the receipt—glanced it over, and put it in my pocket.

MR. GWINN: Read the question.

THE REPORTER: "Do you think a man could glance over that without seeing it was on a newspaper bill-head?"

THE WITNESS: No, sir. I think you can see the whole thing. That is the biggest thing on there.

Q And you did see that on there when you glanced over it?

A I didn't pay any attention to it.

Q Paid very little attention to what was being said during that conversation; that is correct; isn't it?

A I paid attention enough to know I got beat out of my money.

Q And that is the only thing that you do remember very definitely?

A No; I remember most all the transaction and words that were said and done there.

REDIRECT EXAMINATION:

I do not remember whether Mr. Pierce read to me a letter or note. He said he went to school with President Roosevelt back in his early days when they were boys together.

M. R. LEWIS, sworn, testified as follows:

I reside on my farm, near Medina, Gibson county, and was living there when Mr. Pierce came to my home in May, 1935.

I was hauling cabbages, been busy all the morning, and when Mr. Pierce approached me with Mr. Reau Graves, and called me. "M. R.", just like he had always known me. He told me that he was J. E. Pierce from Huntsville, Alabama, and that he was with the Government, selling TVA Units. A Mr. Roach was with him, and had a paper. They opened that paper, and showed me the different counties they had worked—different territories they had been in. I told him I was busy, I didn't have time—didn't know anything about it—give me a little time to think it over. probably I might

buy a little later on. Before that they had already been through our neighborhood taking other houses, and trips, and everything, and he pulled a list out of his pocket and showed me the list—other boys in the neighborhood that bought, and I was in a hurry, and I asked him the least you could buy, and he said $10.00 worth; and, I bought ten dollars worth.

Q Ten dollars worth of what?

A Of the TVA Units.

Q Of the TVA Units?

A Yes, sir.

Q All right.

A And I told him I didn't have a check, or the money. He said he had a check on the Medina Banking Co., and I told him that was the bank I did business with. He filled this check out and I signed the check. When I signed the check he wrote me a receipt.

Q Did he hand you the receipt?

A Yes, sir.

Q When did he hand you the receipt; before, or after you signed the check.

A After I signed the check.

Q In what manner did he hand you the receipt?

A Well, it was folded, I think, twice.

Q Is that the way, sort of like the receipt?

A Yes, sir; something like that.

Q Did you read it, when he handed it to you? Was it folded like that?

A Just about like that.

Q Did you read it?

A No, sir.

Q What did you do?

A I held it in my hand, and they turned and walked back to the car. I turned around and got in the truck; and, when I got in my truck I open it. I put my glasses on and read it. And, when I seen "Huntsville Daily Register" there, I said "I haven't bought anything in the world but a newspaper" I told my nephew—

Q Don't tell what you told your nephew.

A Yes, sir.

Q Is that the check you signed? Is that your signature?

A Yes, sir.

Q Who filled that out?

A Mr. Pierce.

Q Did you read it when you signed it?

A Not particularly; no, sir. I just noticed up here that it was for ten dollars.

Q Was that check paid?

A No, sir; I called the Bank —cashier, and I told him what had happened; and, I said, "I want to stop payment on this check.

Nothing was said about my receiving a newspaper from Huntsville, Alabama, nor about advertising. I do not suppose he stayed over five minutes after he gave me the receipt, maybe not that long.

CROSS EXAMINATION:

I would not undertake to repeat what Mr. Pierce said word for word, "like it was then—four years ago."

The check is payable to a newspaper but I did not notice that at the time. I was standing in front of Mr. Pierce when he filled out the check, but not where I could read it.

Q I say, your recollection was much fresher and clearer when you first testified as a witness, shortly after the occurrence, than it is now four years later?

A I don't know that it was. I don't think I would remember everything just exactly like it happened.

Q Mr. Lewis, I will ask you if, on the first trial of this case, you were not asked these questions, and if you didn't give these answers. Now, listen carefully to the reading of the questions and answers: "Question: Who filled that out (referring to check) you, or Mr. Pierce? Answer: Mr. Pierce. Question: In your presence? Answer: Yes, sir; standing right in front of me. Question: You saw him fill it out to the Daily Register, or Bearer, for ten dollars on the Medina Banking Company, Medina, Tennessee? Answer: Yes, sir; that is right.

Question: On May 25, 1935, for advertising. What is that "Lewis Brothers" Answer: Yes, sir. Lewis Brothers by M. P. Lewis. Question: You saw Mr. Pierce fill all that out except the name? Answer: That is right." Now, were you asked those questions; and, did you make those answers?

A Yes, sir; but I don't remember saying "M.B." Lewis; My initials are M. R. Lewis.

Q I am reading from a carbon copy; they have an R instead of a B. It is my error; It is Mr. M. R. Lewis.

A Well, something like that; yes, sir.

Q Now, you were given a receipt at the time?

A Yes, sir.

Q And after Mr. Pierce left you got to thinking over the matter and examined the receipt?

A That is right.

Q And you became dissatisfied with your donation, and immediately called the bank and stopped payment?

A I don't know that I was dissatisfied with the payment. I thought he wrote a receipt for something I didn't buy.

Q You saw it was on a newspaper bill-head?

A Yes, sir.

Q And you had no difficulty in understanding it was for a newspaper?

A I didn't buy a newspaper; I bought TVA Units.

Q I wasn't asking you what you bought; I was asking you if you had any difficulty in understanding, when you examined the receipt, what you had paid your money for?

A No, sir; not after I read the receipt, I didn't.

Q And that receipt was given you at the time you gave him the check?

A Yes, sir.

Q All there as a part of the same transaction?

A That is right.

Q And even though it was folded, unfolding it just took an instant of time; didn't it?

A That is right; yes, sir.

Q And he gave you a receipt then and there, as a part of

the transaction, showing what your money was received by him for?

And, when you saw that you called the Bank and stopped payment?

A After I saw it was for a newspaper.

Q That is quite true; isn't it?

A Yes, sir.

I am related to the witness Mathis who testified here and have a brother here who is also a witness.

All of us live in the same community. Mr. Roach had the newspapers.

A I don't know whether they opened the paper, or the first page. They showed me some advertisements of different counties where they had worked in.

Q They turned several different papers, showing several different counties?

A Yes, sir.

Q And you didn't make any close examination of those papers?

A No, sir; never took them in my hand. Never touched them.

Q You didn't pay close attention to the papers?

A I noticed the counties that they worked in all right enough.

Q Did you notice the page advertisements of the various counties in which they had worked?

A No, sir; I didn't notice the advertisements.

Q You were not paying close attention, if advertising was shown to you?

A I wouldn't have been interested in advertisements in other counties.

Q My question was, if they were showing you page-advertisements, you were not paying enough attention to know what they were?

A They didn't show me advertisements. They showed me some lines, of different counties.

Q Was there any reading matter on those lines?

A No, sir; no reading matter at all. First trial, you all had

paper with lines and something on it, only it was a different color.

Q Where is that bundle of papers, Mr—

A No, sir; no reading matter at all. First trial, you all had you all had we had a bunch of papers with big black lines—I think the lines in the paper you had here are red lines.

Q Isn't this the bundle of papers that he had? Take it and look through it.

A I don't know whether I could tell.

Q Tell whether it was one like it, or similar to it?

A It looks sort of like it; about the same size. I don't know whether that was in there, or not.

Q Look at it.

MR. GWINN: Let me ask it again: You say there were black lines in the paper they had out there when you gave him the check?

A Yes, sir.

Q And that the papers that were here on the first trial were red lines?

A I think they were red-lines; yes, sir.

Q Mr. Lewis, he told you about working Obion and Lake and Henry, and Tipton and Lauderdale and Haywood, and other counties when he was there; didn't he?

A Yes, sir.

Q And showed you the papers to show you the character of the work that had been done in those counties?

A Yes, sir; I think so.

Q But you didn't pay very close attention to the papers that they exhibited to you?

A No, sir; only the map that he showed me there of the county.

Q Was that a map of every county they had worked?

A Well, I don't know, sir; he didn't say all the counties; he said of the counties that they had worked.

Q When Mr. Pierce approached you, what did he tell you he was doing?

A With the Government, selling TVA Units.

Q Is that the exact language he used, Mr. Lewis?
A I think so.
Q Or, is that just an impression that you have formed as a result of these various trials, and your conferences with other witnesses?
A I am sure that is what he told me; that he was with the Government selling TVA Units. He says "Every time you put up ten dollars we, the Government, will put up the same amount.
Q He said "Every time the Community, or you put up ten dollars that "we, the Government"—and used that language?
A Yes, sir; "the Government" would put up the same amount.
Q Now, I want to ask you, Mr. Lewis, to listen carefully to the reading of the question and answer—and state if you didn't state to the District Attorney, on Direct Examination, in the first trial of this case, the following answer to the question he asked, which I read to you: "Question: Just go ahead and tell the Court and Jury what happened when he flagged you? Answer: Well, when he flagged me he got out of the car. He was carrying a cane. He hung his cane on his left arm and he called me "M.R." just like he had known me all my life. I kept trying to recall who he was, if I did know him. I didn't recall seeing him before. He told me, when he got out, he would only take about ten minutes of my time; that he wouldn't talk but a few minutes: He said he realized that we were very busy at that season of the year. He approached me and told me he was selling TVA Units. Question: Did he say he was representing the Federal Government? Answer: No, sir; didn't say that he was representing them; just said he was selling TVA Units. He said when we, the people, put up so much then the Government put up the same amount. Question: Did he say we, the people, and "we, the Government"? Answer: He said 'We, us, the Government."

THE WITNESS: That is about what he said.

G Is that about what he said then?
A Yes, sir; I think so.

Q Said "we," the Government.

A I think that is about what he said.

Q But he didn't tell you he was representing the Government, but just told you what the Government would do?

A Just said, selling TVA Units for the Government. I thought he was representing the Government.

Q I understand you thought that; but, my question is tell the Court and Jury now, just what Pierce said in that connection?

A I might not do it; it has been four years since it was said I can tell you somewhere in substance of what was said."

I think that Mr. Roach held the papers and turned them too. I understood that the object of the demonstration with this bundle of newspapers was to show "how the line of TVA would run, and what counties it would hit." He had a paper with a net work of black lines when he showed it to me and it had red lines when they demonstrated here at the first trial.

(COUNTS 9 and 10)

CLARENCE LUCKEY, sworn, testified as follows:

I live on and own a farm in Gibson County, Tennessee Mr. Pierce came to my place in 1935 and said "Hello, Clarence," there are four of you boys, calling the names of my brothers, and he talked about my cabbage patch and told me what his occupation was.

"A He said, "We are here representing the Government, trying to sell TVA Units."

Q All right, Go ahead.

A He began to explain his proposition to me, and wanted me to take some.

A All right, sir.

A I was pretty well sold on the idea, and I began to question him as to how little I could get out on.

Q What did he tell you?

A Well, he wanted to sell me $50.00 worth. That was when I began to question him; and, he finally said $10.00 was the

least that they would sell. Whenever he was trying to sell me the fifty dollars, I asked him who else had bought any here in our community. He said I was the first one that he had worked there in our section. Then I said, "What sections have you been in?" And he said he had been below Trenton, had skipped some county, I knew some men over there in the north end of the county, and he named some, and said what they were buying. I said if those men are buying that, I can buy that much. So, he said ten dollars and I told him I would take one.

He filled out the check from a pad of blank checks which he had. I signed it. He then gave me a receipt. I was busy as I could be. I stuck the receipt in my hip pocket and did not look at it till I got home. "He sort of had it folded to a certain extent."

Q Was there anything said about your receiving a newspaper on that occasion?

A I don't think so; no, sir.

Q Was there anything said about advertising, on that occasion?

A No, sir; I don't think so.

Q Did you have anything to advertise?

A No, sir.

Q Did you advertise anything with him?

A No, sir.

Q In the paper that you received, did your name appear in the advertisments on that?

A I think I remember seeing it once; I wouldn't say for sure.

Q You are in the Mt. Zion Community?

A Yes, sir.

Q Read in here, "Mt. Zion, Clarence E. Luckey. Truck Gardner. Featuring strawberries, and general farming." Did you see that in there?

A I judge I saw that. I didn't pay much attention to that.

Q Did you authorize, or tell him to put that in there?

A No, sir.

Q Was there anything said about your putting that in there?

A No, sir.

Clarence Luckey

Q Did he tell you where he came from, where he was raised or anything about that?

A Well, he told me that him and Franklin D. Roosevelt were boys together.

Q He did.

CROSS EXAMINATION:

Mr. Pierce told me that he knew Andrew Johnson, but did not say he got a contribution from him. He said he knew Roosevelt. Mr. Roach had a bundle of papers. I think he turned them while Mr. Pierce was talking.

Q That wasn't my question. I asked you to state, as best you can, the relative, or approximate positions where you were standing, if at all, and Pierce was standing, and Roach, and ho wclose to each other while this paper examination was being made?

A Pierce was standing in four or five feet of me; and, Roach, if I recollect right, was six to eight feet.

Q He wasn't holding the paper, then, for Mr. Pierce to turn?

A [illegible] the paper.

Q For Pierce to turn, or point out?

A I don't think Mr. Pierce was turning the papers. I don't think so.

Q Was anybody?

A Roach worked the papers, I think, a little bit.

Q But you didn't pay any attention to the demonstration, or use made there of the paper?

A No, sir.

Q Or very little?

A That is right.

Q You would not undertake to say exactly what was said in that conversation?

A Exactly, no, sir.

Q You are simply attempting to give your conclusions from what was said at the time?

A (No response heard)

Q You don't recall anything about advertising?

A He was talking—good talker.

Q Talked rapidly; didn't he?

A Yes, sir; good talker.
Q How soon after this conversation was that that you testified in the Magistrate's trial?
A Well, it was two or three days.
Q The matter was much clearer in your recollection then than it is now?
A I think so.
Q I will ask you if you didn't state in your evidence at the Medina hearing, the following in answer to this question: "Question: Did he say anything about any advertising, or publicity? Answer: He pulled out his papers, and talked about some kind of advertising, yes, sir."
Q (continuing) Were you asked that question, and didn't you make that answer?
A I don't remember it.
Q You wouldn't say you hadn't?
A I wouldn't say I hadn't.
Q You have no recollection one way or the other?
A No, sir.
Q Now, Mr. Luckey, in connection with the work that he had done in other counties; and, that he was proposing to do in your county; didn't he tell you that he was interested in the development of the natural resources for the community; or, that in substance?
A I don't know.
Q And that he wanted to aid the extension of Muscle Shoals Power and cheaper electricity into the rural communities in which he was working?
A He may have used those words; I don't know.
Q Didn't he also discuss the building up of good roads in your community?
A I don't think he said anything to me about good roads.
Q You don't think he did.
A I don't think he did.
Q You would not say that he didn't?
A I wouldn't just say that I know he didn't; but, I don't think he did.
Q He didn't exhibit to you any stock certificate; did he?

A No, sir.

Q You say you bought a TVA Unit. What did you think a TVA Unit was?

A I didn't know. I understood if we would put up so much--that is the way I understood it. I reckon I should have understood more about it, all right; but if we, in the community, the farmers, would put up so much, they would put up so much; and, the communities that put up first were going to get this line first; that is the way I understood it.

Q And you are stating your understanding of it; are you not?

A Yes, sir.

Q Without any ability to recall the exact language that was used?

A That's right.

Q Mr. Luckey, Mr. Pierce, in the beginning of his conversation with you, read a letter; didn't he, to you, telling you who he was, where he was from, what he had done in the way of constructing office buildings, and a Deacon in the Church, etc.?

A Yes, sir; he told me he was a Deacon in the Church.

Q I say, he read a letter.

A I don't know whether he read a letter, or not.

Q But you would not say that he didn't?

A No, sir.

REDIRECT EXAMINATION:

He did not tell me where the Andrew Johnson he said he knew lived or what was his business; just said he knew Andrew Johnson, and that he knew Roosevelt.

T. L. LEWIS, sworn, testified as follows:

I own and live on a farm six miles east of Humboldt in Gibson County, Tennessee; I first met Mr. Pierce when he came to my home in May, 1935.

A Well, it was about 8:00 o'clock, and a car came driving up, and he said, "Hello, Tom." I turned around, and he said, "Hello, Tom." I still looked at him; and, he drove up in about four feet of me and got out. He said, "You don't know me?" I said "No." He said, "My name is Henry Pierce." "My name

is old Henry Pierce." Just about that time Mr. Roach got out, and stepped around, and he introduced Roach to me, and he said, "We are with the Federal Government, representing TVA, selling TVA Units. He said, "I want to sell you three." I said, "I am not interested. I said, "What are they worth?" He said "Thirty dollars." I said, "If you are with the Federal Government, show me your credentials." He said, "I forgot them; I left them at the hotel." He said "Tom, this will be a great thing for the farmers." I said, "If it will help the people of this community and everything it will be a great thing for the farmers." I said, "I am not interested." I said, " I don't believe the Government has got any men out selling TVA Units." He said, "You mean to say you don't believe what I say, a man of my standing, and a deacon in the Baptist church, and Editor of a paper, and own an office building in Huntsville?" I said, "No, sir; I don't believe a word of it. "I said, "Give me your name and address." He said, "Tom you know one thing? You are one of the greatest farmers in this country; you are known all down in these lower counties." I said, "Who did you get your information from?" He said, "Mr. McClary." I said, "Did McClary say that?" He said yes. He had a $50.00 bill in there, and he said Mr. McClary bought $50.00 worth. I told him I wasn't interested; if he would give me his name and address I would investigate. I knew a few Federal men at Jackson. He said the Government couldn't have people out here waiting for these people to investigate. He said, "I have to make out my report every night; we can't wait.

Q. Did he say where he sent his report to?

A. No, sir; he didn't say.

Q. Did you buy anything?

A. No, sir.

Q. Did you receive a newspaper from him after that?

A. No, sir; never did.

Q. Was there anything said to you about a newspaper?

A. No, sir; he had a bunch of papers with him, but I didn't see any newspaper.

Q. Who had the bunch of papers?

T. L. Lewis

A. When he got out he had them under his arm. He was showing me—said: "This is a map of of the lower counties. Mr. Roach stood out with this on his arm. He was explaining these maps. He said: "This is a map of these lower counties." Then he got up to what he said was Gibson County. said: "I am not interested. It is not worth while taking time up with me." He said: "Right along here is where your house is. The line will come right along here. Here is the line." Holding his hand up that way. "Going to come out by the old Antioch Church." He said: "This line will come off the concrete road around here by Old Antioch Church." He said: "Now, what community do you live in on this survey?" I said: "I don't know anything about that. I can't read it." He said: "Where do you live?" I said: "I am not interested." He said: "You live in the Antioch Community?" I said I don't—He said: "Mt. Zion?" I said: "I don't know anything about it." He said: "You are missing a good opportunity." He said: "We are opening this up. You got your home named?" I said "No." He said, "We will name it Louisville."

CROSS EXAMINATION:

N. R. Lewis is my brother; John Thomas Mathis is my first cousin.

Q. Mr. Lewis, what kind of papers did Mr Roach and Mr. Pierce have there on that occasion?

A. Mr. Gwinn, the best I can tell you, they were rolled up in a roll, about that large; and, they were awfully dirty looking. He said maps, and then when he got down to the survey, this TVA survey, was black lines.

Q. Mr. Lewis, did they look anything like this bundle of papers?

A. No, sir; no reading at all, or no red-lines.

Q. No reading at all?

A. No, sir.

Q. Just a bunch of maps?

A. Map, and then they had black-lines. That, he said, was the survey; and, then, down here, where there was a church, he had a little square. He said: "This line here will

come right by your home."

Q. What size?

A. About the size of these papers.

Q. Size of that newspaper?

A. Yes, sir.

Q. Any printing on it?

A. I didn't see any; not a word.

Q. Just black lines?

A. Yes, sir.

Q. Any names?

A. No, sir, I didn't see a name.

Mr. Pierce told me about a big building in Huntsville and about being a deacon in the Baptist Church. Roach was driving. Reau Graves was sitting on the back seat of the car. Pierce got out with the bundle of papers under his arm. It was a pretty good sized bundle. When Pierce started to talking about the TVA, Roach hung the papers on his arm and he pointed out with a cane. Nothing was printed on any of them. I did not see a thing printed on them. I did not pay very close attention. I told him I was not interested.

He showed me a map of other counties than Gibson but I cannot say what counties.

No mention was made of a newspaper and I never saw any newspapers.

Q. Did he show you a map of other lower counties than Gibson?

A. Yes, sir; said "lower counties" but I couldn't say what counties.

Q. Mr. Roach didn't walk out with those papers, then did he?

A. No, sir.

Q. And nothing was said about any newspaper?

A. No, sir.

Q. And you never saw any newspapers?

A. No, sir.

Q. And nobody mentioned a newspaper on that occasion?

A. No, sir.

Q. Mr. Lewis, you have testified in this case twice before; haven't you?

A. "Yes, sir."

W. R. COUCH, sworn, testified as follows:

I own and live on a farm in Gibson County, Tennessee, and have been a member of the County Court for about a quarter of a century. The defendant came to my home in May, 1935. There were three men in the car. Mr. Pierce and Mr. Roach got out of the car and came up on the front porch.

"I met them on the front porch, and Mr. Pierce introduced himself to me, and called me by my given name. My name is William Robert, but they call me 'Bill'; and he called me 'Uncle Bill' I think.

Q. Uncle Bill Couch?

A. Yes, sir. He said, "You have a beautiful home here—ressembles mine, in my home state." He says, "Have you a picture of your house"? I told him no. He said "I would like to have it; it resembles mine," where he lived, and I told him I didn't have one. Then he told me his business; that he was representing the Federal Government; and that he wanted me to take $500.00 worth of stock; and that if I would take it the Federal Government would match it and put it in my wife's name, another $500.00. I told him I wasn't financially able to do it; that I had just gotten out of the hospital in the City of Memphis, and that I had had an operation and hospital bills, and I wanted to use my money in that way. I told him I didn't think I would live long, the condition I was in. He said: "You ought to do that much for your neighbors." I said I wouldn't live long enough to see TVA come by. He said the Federal Government, with my assistance, would put it there in less than eight months. I said I didn't know whether I would be there that long.

Q. He said the Federal Government, with his assistance, would put it in in eight months?

A. Inside, he thought, of eight months.

Q. Yes, sir.

A. Then he also showed me a map—some kind of map with counties and states drawn off. I didn't pay much at-

tention to it. Then he wanted to show me recommendations of men of his state. I told him it wouldn't be worth anything to me; that I didn't know him, and didn't know them. He said he would read it to me, anyhow; and, he read one or two endorsements of men of his state. Well, I didn't know him. First time I had ever met him.

Q. What kind of stock did he want to sell you: TVA stock—Federal Government, TVA stock?

A. Yes, sir; he said he was a mighty good friend of the President—President Roosevelt. I told him, yes, he was a fine man.

CROSS EXAMINATION:

I will be 76 years old the 13th of this month. The man in the car with Pierce and Roach, did not come on the front porch but stayed in the yard. Pierce said he had hired this man at Trenton.

A. Roach never opened his mouth; came up on the porch and stood by the side of Mr. Pierce and unfolded—I reckon you would call it a map.

Q. Map, or newspapers?

A. No newspapers—something like a book—something about that wide, and he would unroll it that way, and show the Counties and Districts, something like that.

Q. Mr. Couch, did it look anything like that? (Referring to a bunch of newspapers)

A. No, sir; nothing like that. That is printed, and this was a map.

Q. Was the bundle, aside from not being printed, about this size?

A. The bundle seemed to have a back on—it described the districts and counties. I never paid any attention to it.

Q. I mean was it about this size bundle, whether newspaper, or any other kind of paper?

A. Wasn't any kind of paper—only map drawn on plain paper.

Q. On plain paper. Did he call the names of the counties—Obion, Weakley, Lake, etc., and turn it, like that?

A. No, sir; he remarked to me "West Tennessee."

Q. West Tennessee Counties?

A. Yes, sir.

Q. Did Mr. Roach hold that on his arm, or hand?

A. I don't know whether one, or both hands; Mr. Pierce said, "This is my Secretary."

Q. Mr. Pierce turned the paper in that demonstration to you?

A. I think he did. I don't know. It was a book, something like that, you know—back cloth, or leather, back.

Q. Black cloth, or leather back?

Nothing was said about any newspaper. He said he was representing the Federal Government, putting TVA through West Tennessee. He said the Federal Government was collecting this for a survey through by my house—for a survey to put TVA through, and part of it would go for a survey.

Q. Now, Mr. Couch, did he read a letter to you—he told you where he lived, didn't he?

A. Yes, sir.

Q. Huntsville, Alabama?

A. Yes, sir.

Q. Publisher and editor of a newspaper?

A. No; I don't know that he mentioned newspaper to me, at all.

Q. You wouldn't say that he did, or didn't?

A. No; I don't remember that he said that.

Q. Told you about offices and bank buildings that he was interested in there, didn't he?

A. He told me about being in a bank.

Q. Did he say anything about office buildings?

A. I don't kno wwhether he did, or not.

Q. Did he tell you those things, or read them to you from a letter?

A. He read one or two letters to me, recommending him as something like an honorable man. I didn't pay a bit of attention; but, I remarked, "Me, not knowing the man and not knowing you, it is not worth anything to me."

Q. If I should read the letter he read to you, would you recognize any part of it?

A. I expect not. I didn't pay any attention when he was reading. I wasn't interested in anything like that.

Q. The fact is, then, you were not paying any attention to anything that he said, because you were not interested?

A. I was paying this much attention to it; that I couldn't take stock in what he asked me.

Q. In othe. words, you had made up your mind that you were not going to participate, or make any contribution; and, furthermore, you were not giving a great amount of time or attention to it?

A. No. It looked unreasonable to me that the Federal Government would call on me to build a TVA line; and while I don't know much about the TVA system, I understand—

Q. (Interrupting) Now, did the paper that he turned there have any appearance of this I am holding?

A. No; the paper they had wasn't printed; it was marked like with pencils.

Q. Just a pencil map, or pencil sketch?

A. Yes, sir.

Q. But you say that he did read the letter to you, describing his work?

A. Yes, sir; I think so.

Q. You remember that you didn't want to make the contribution to promote TVA, because you didn't think it was necessary?

A. Yes, sir.

Q. And that is really the substance of about what you recall, and the impression you formed?

A. (No response).

Q. You didn't make any notation or note of what he said, or written memorandum?

A. Not—only in my mind.

Q. That has been four years ago, Mr. Couch?

A. Yes, sir.

Q. And this is the first time you have testified in this Court?

A. Yes, sir.

DR. D. J. CONYERS, sworn, testified as follows:

Dr. D. J. Conyers

I am 73 years old, practiced medicine at one place in Crockett County for 42 years, but have not practiced for the past two years. The defendant, J. E. Pierce, came to my residence in Crockett County in June, 1935. Mr. Pierce introduced himself, and Mr. Roach. A young deputy sheriff, Frank Connell, was with him, but he was some thirty or forty feet away, laying down on the grass.

Q. How did Pierce approach you and introduce himself to you, Doctor?

A. Well, I was in the rear of my place when I heard his car in front—and, in two or three minutes I walked around. When I walked around the house—when I got in twenty-five yards of him, he called out, "How are you, Dr. Conyers?" And introduced himself as Mr. Roach.

Q. Did he tell you who he was, and where he was from?

A. He didn't right at that time. He began talking about some things, generally, about that time, before he launched out and told me where he was from.

Q. Just go ahead and tell us the conversation that took place between you, as best you can, Doctor.

A. Well, he said that he had come through the county seat of my county, and came down through some mighty fine country, and some fine farmers, and some roads that could be made mighty good, and he commented on the churches and the schools, the good churches and good looking school buildings—road from Alamo down to my place, and then he—he asked me then how I felt and what my attitude was toward TVA. I told him that I was very enthusiastic over the TVA, and was in a big hurry for it to get into the rural districts. He said, I am representing the TVA in their project to get to the rural communities in the TVA territory. He said that the TVA has a proposition in which they propose to meet the counties in a subscription of something that he called units. He said each county, according to its area and population is asked to do so much, and the TVA, we are meeting that with TVA funds.

Q. In other words, if the county would put up so much, did that mean that the TVA would put up so much?

A. Would put up so much. He very plainly explained that, and expressed it that the TVA would put up dollar for dollar what each county put up. He then showed me what—told me—had a paper on the arm of Mr. Roach on which he showed what Gibson and Madison and Dyer Counties had done. He said they had responded splendidly to the proposition, and that he felt that Crockett County would do the same, and then when he asked me to make a contribution he asked me for—he said he thought I should buy about a hundred dollars worth. I told him that I was anxious to contribute my part to Crockett County. That I felt as a good citizen I would want to make a contribution, and I didn't feel that I wanted to do quite that much. I really didn't have to do a great deal of talking along there, because after he had convinced me 100 per cent that he was a TVA representative, and that every dollar we put up would be matched by a dollar by the TVA, I wanted to help.

I did not have electricity in my home. I bought two and a half units. Mr. Pierce had blank checks, and he filled out one for $25.00 and I signed it.

Q. Doctor, did you read that check before you signed it?

A. I really couldn't—I didn't have my glasses on—didn't have that in my pocket—I looked at it and I can hardly read it. I couldn't hardly read it, now, without I knew what it was; and I don't know what it was. I was so sure. I was so fully convinced that I was signing something what was for the benefit of my county that I just didn't hesitate and I just signed it.

Q. Is there anything on that check now that was not on there then?

MR. GWINN: If your Honor please, I object to that question.

GENERAL McCLANAHAN: I will withdraw the other question:

Q. Is that check the same as it was when you signed it?

A. It is not.

Q. Now, what is the difference from the time you signed it?

A. After the word "for" down there, there wasn't anything when I signed it.

Q. Now, it has "advertising" on it. You are sure the word "advertising" wasn't on there?

A. I know it wasn't on there.

After I gave Pierce the check he gave me a receipt. I did not read it at the time. The receipt was folded. I did not buy advertising with the check. There was no intimation of any in our conversations.

It was about an hour before I read the receipt. I had a hurry call to make, was fixing to go when they came there. I did not unfold the receipt, just stuck it in my pocket.

I had nothing in the world to advertise.

Q. Anything said to you about advertising in the conversation that day?

A. After I had bought the units, he asked me if I wanted to sell my land. I told him no. Well, he says, "We will be glad to advertise your land free of charge." I told him I didn't want to sell any land. He said then, "You would sell it?" I said, "Yes, there is a price I got I would sell it, but wouldn't sell it at the market price, at all—didn't want to sell; haven't sold any since.

Q. Did you receive the paper from him?

A. There was a paper came to my place.

Q. And that was from Huntsville, Alabama, was it?

A. Yes, sir.

Q. Did your name appear in an ad in that paper, under Dyer and Crockett Counties, I believe it was; wasn't it?

A. Yes, sir.

Q. Did your name appear in those advertisements?

A. Yes, sir.

Q. I read here, under "Alamo, County Seat, Dr. D. J. Conyers, Lebanon". Is that your community?

A. Community center.

Q. Physician-Surgeon-Planter, 750 to 800 acres of land.

on terms; cash or terms." Did you authorize that ad, to be placed in that paper?

A. No, sir.

Q. Another ad about "Lebanon, Dr. Conyers, Physician & Surgeon, Planter. Dr. Conyers announces that he would sell 750 to 1000 acres of his good land, cash or terms."

Q. How many issues of this did you receive?

A. I don't know. I received several, but didn't receive it regularly at all.

Q. Was there anything said during your conversation about your receiving a newspaper from Huntsville, Alabama; if so, when?

A. No; there was nothing said about that; I didn't know that it was a newspaper. I thought it was a TVA periodical they were handling there.

Q. Was there anything said about a newspaper or TVA periodical?

A. He didn't call it that. He didn't call it a newspaper I thought it was a TVA periodical. It never dawned on me that it was a personally owned newspaper.

Q. Did you have anything to advertise in Alabama?

A. Nothing.

CROSS EXAMINATION:

Mr. Pierce said he was "representing the TVA in a proposition by which the TVA would match, dollar for dollar with the county in getting a fund to make a survey of the counties and hurry up TVA in the rural districts." It has been four years since this occurred and I would not undertake to state word for word the language used by Mr. Pierce. I do not remember right now whether Mr. Pierce said anything about Muscle Shoals. I knew Muscle Shoals was there, in the TVA job, but I don't know whether he used TVA or not— Muscle Shoals I mean."

Q. Dr. Conyers, you identified, at that time, and the public generally, TVA and cheaper power, whatever the exact language may have been, as meaning substantially the same thing; didn't you?

A. I was of the opinion that TVA would cause cheaper power.

Q. And a man promoting a program, or presenting a proposition for cheaper power wouldn't that be substantially the same; in other words, promoting, or working in the interest of TVA? You were already TVA conscious; were you not?

A. I was for TVA, and all I wanted to know was to know when I put a dollar in that thing, it was going to TVA; and when he told me TVA would match my dollar with another dollar, I was hungry for it.

Q. Or in furtherance of the TVA program?

A. I did it for TVA advancement.

Q. And Mr. Pierce had a bundle of newspapers there; didn't he?

A. Mr. Roach did.

Q. He told you where he lived?

GENERAL McCLANAHAN: Wait a minute. Who did you say had the newspapers?

THE WITNESS: Mr. Roach had the newspapers there;

Q. Mr. Pierce told you where he lived?

A. I think he told me he lived at Huntsville, Alabama, or right near.

Q. Did he tell you he was a newspaper man, in the newspaper business?

A. No, sir; never intimated such a thing.

Q. When he was discussing advertising, what did you think he meant?

A. Never discussed advertising with me at all.

Q. Aren't you mistaken about that? Have you thought about it?

A. Yes, sir; he didn't say any thing about advertising to me until after it was all over—not a word about selling advertising.

Q. He did discuss advertising before he left?

A. Before he left he asked me if I would like to advertise—if I had some land I would like to advertise. I told him I haven't advertised in my home papers; didn't care any-

thing about it; didn't care anything about it; didn't have anything to sell.

Q. And didn't Mr. Pierce promise to send you a newspaper free?

A. He said, "We will send you this periodical free; yes, sir.

Q. And that was the paper that Mr. Roach had there, and being used to demonstrate with you what they had done in other counties?

A. That was all I saw. I didn't see the name of the paper; I didn't see a word that was on it, except the big letters, showing what the adjoining counties had done.

Q. Well, you noticed that the paper was the Huntsville Daily Register; didn't you?

A. No, sir; I didnt notice that; I didn't know what paper it was; didn't know the name of the paper; couldn't have told at any time after that.

Q. This matter was fresher in your recollection when you testified the first time than it is now; wasn't it—Doctor—naturally would be?

A. It naturally would be, but I—

Q. (Interrupting) I will ask you—

GENERAL McCLANAHAN: You cut him off. Let him finish.

Q. Did you want to say something else, doctor?

A. I said I had a right retentive memory, and I remembered the principal things that occurred at that meeting.

Q. My question is whether your recollection was clearer then, than now.

GENERAL McCLANAHAN: I think he answered that, your Honor.

Q. Now, Dr. Conyers, I will ask you if, in the first trial if you were not asked if you noticed this paper was the Huntsville Daily Register, and you answered "Yes, sir."

A. If I answered it that way, I knew it.

Q. And you also stated, did you not, in your testimony in the first trial, that you thought the Huntsville Daily Register was a TVA publication?

A. I thought it was a TVA publication whatever it was. It never occurred to me that it was a personally owned paper.

Q. And you made no inquiry, however, of Mr. Pierce, about the ownership of the paper, or publishers of the paper, that Roach had there demonstrating on that occasion?

A. No, sir. I was led to believe, from what he said, and the way he exhibited the paper, that it was a TVA periodical.

Mr. Roach held these papers, turning them, and showing what the different counties had done. Pierce was about four or five feet from me. The three of us formed a sort of triangle and were close together. All I noticed in the papers was the names of the counties.

I made contribution to help a progressive move to bring about cheaper power in Crockett County.

Q. You are connected with a bank?

A. Yes, sir.

Q. You purchase stock, frequently, in corporations?

A. Yes, sir.

Q. And you knew you were not buying stock.

A. Yes, sir; I knew I was not buying stock.

Q. And you knew you were not buying anything?

A. He called it units, but I didn't know what that meant. I didn't expect to get anything in the way of—

Q. (Interrupting) You were making a contribution?

A. I wasn't looking for any dividends.

Q. You were not looking for any stock of anything like that?

A. No, sir.

Q. And there was no claim that anybody was selling stock?

A. (No response heard)

THE COURT: What did you say, Doctor? You didn't answer that question. Mr. Gwinn made a statement—wasn't a question.

Q. I asked—

THE COURT: (Interrupting) Wait. Let me ask the witness. You interrupted. Let me repeat Doctor, did Mr. Pierce make any representations, or not, that he was selling

TVA units, or stock in the TVA?

THE WITNESS: He didn't say anything about selling any stock in TVA. He simply said "As a representative of TVA I am putting a proposition to the citizens of the rural districts that the TVA proposes to meet them, dollar for dollar, or go fifty-fifty with them in a project to make an early survey. He didn't try to sell me stock.

THE COURT: All right.

Q. I will ask, you, if in your testimony in the first trial, closer to you in point of time than it is now, if you didn't states *that you just wanted to help out in what he represented as a progressive move for the benefit of my community. That is all*"?

A. If the TVA asked anything in Crockett County and Crockett County was to do anything, I wanted to be one of them that met the requirements of a good citizen of Crockett County.

Q. My statement, Dr. Conyers, is if you made the statement I have just read to you, in your testimony in the former trial?

A. Yes; I made that, and that is my explanation as to the meaning of it.

Q. I will aslso ask you to listen carefully to the following questions and answers that I will read, and then, when I finish I will ask you if those questions were asked and those answers made of the former trial by you: *"Question: Didn't he show you some results o fhis work in adjacent counties? Answer: No, sir, he said he had done work in adjacent counties, and he said that all of the furnished their pro-rata part of the TVA units. Question: You noticed that this paper was the Huntsville Daily Register; didn't you? Answer: Yes, sir. Question: You noticed that? Answer: No, I didn't notice that at the time at all. I did not know what was in the paper. Question: He told you he had put on this program in Northern Alabama? Answer: No, sir. Question: In 46 counties in Mississippi? Answer: No, sir. Question: And he had put it on in West Tennessee? Answer: He told me he had put it on in West Ten-*

nessee, and had worked in Mississippi, but he did not tell me about the work that he had done anywhere else, and he told me it was all in furtherance of this TVA program that the Government was so interested in. Question: Didn't he tell you that very emphatically? Answer: Yes, sir. He was a good salesman. Question: Now, isn't the fact of the matter this: he talked so fast you could not keep up with him. Answer: Yes, sir, I think I kept up with him. Question: Did you ask him any questions. Answer: Very few. I did not give it that much time." Were you asked those questions? And did you makes those answers in substance?

A Yes, sir.

Q. Now, didn't he ask you, doctor, for permission to quote you in his newspaper, or in the newspaper with which he was identified, as being an advocate of Lower Taxes, Better Roads and Cheaper Power?

A. I don't think he asked me a question like that, but from what I told him he could draw his deductions, and know I was in favor of things of that kind.

Q. Didn't he specifically ask you?

A. I am willing to be quoted by anybody on a thing of that kind.

Q. That is not my question: Didn't he specifically ask your permission to quote you as being in favor of those things?

A. I don't remember, now, whether he did, or not but I would have been willing

Q. Now, doctor, you signed a check that Mr. Pierce wrote; that is correct, isn't it?

A. Yes, sir.

Q. And did you read that check?

A. I looked at it, but I couldn't have told, right then, who the name that was written on it.

Q. Nor who it was made payable to?

A. I couldn't have told to whom it was payable, no, sir, I could not.

Q. Did you notice anything on the check, except the amount of it?

A. I just looked over the check. I always look over them, in giving a check. I noticed that there wasn't anything after "for".

Q. Now, Dr. Conyers, that has been some years, of course, as you have frequently said. I am going to ask you to listen to these questions and answers of testimony in the first trial —your testimony:

> "*Question: Dr. Conyers, you say you gave your check? Answer: Yes, sir. Question: He wrote out the check? Answers Yes, sir. Questions You signed th echeck? Answer: Yes, sir. Question: and you read it before signing it? Answer: I may have read it. I can't read so well without my glasses, you know. Question: Did you read it before you signed? Answer: I saw that it was made to something, but, if I saw that, I couldn't tell what it was.*" Were those questions asked, and did you make those answers?

A. Yes, sir.

Q. And you then didn't say that you read the check and you don't say that now?

A. I couldn't tell the name on the check.

Q. Now, he gave you a receipt there, before he left the front porch, didn't he?

A. Wasn't the front porch; we were out on the grass.

Q. Cut in your yard?

A. Yes, sir.

Q. When did you read that receipt?

A. I made a hurried call. It was something like an hour. I made the call before I took time to unfold it and I couldn't hardly read that. As soon as I got home I called the bank.

Q. You saw it was on the bill-head of a newspaper; didn't you?

A. I called the bank to try to stop the check.

Q. I say you saw—

GENERAL McCLANAHAN: (interrupting) Let him finish his answer, please.

THE COURT: Finish your answer, Doctor.

THE WITNESS: I say, I called the bank to stop the

check, but the Bank told me it had done gone in, something like an hour after I gave it.

Q. And it was printed on the bill-head in plain, bold letters, large type, "Huntsville Daily Register" on the bill-head?

A. I don't know whether it was on that, or not; I didn't see it on there at the time, That is, I didn't particularly notice it; but, I suppose I could have seen it. But I didn't know what it meant. I didn't know it was a private paper.

Q. You mean when you first examined that receipt you didn't see that?

A. Oh, yes; I saw then what it was. That was the reason I called. I saw it was something like that then; that is the reason I called the bank.

Q. You had no difficulty reading that; did you; that it was a newspaper, on the receipt?

A. I had no difficulty seeing enough on there to make me suspicious. I can hardly read that receipt, now; but, I saw enough to make me wish I had my check back.

Q. Doctor, did he tell you he was going to send you this paper free?

A. He said he was going to send me a paper—keep me posted, so that I would be posted. On the progress that the TVA was making.

Q. He told you to those from whom he had received funds no charge would be made for advertising anything they had to sell; the advertising would be free?

A. When I told him I didn't have anything to advertise, and didn't want to advertise anything, he told me then "It won't cost you anything." I didn't tell him then to go ahead. He just said he would do it.

Q. You consented for him to advertise some land; didn't you?

A. I didn't tell him not to. I assented, I reckon you would call it. I didn't tell him not to. I wouldn't give a nickle for any advertisement in any paper—if I had wanted to advertise I would have advertised in the Commercial, or some of my county papers.

Dr. D. J. Conyers

Q. You instituted a civil suit against Mr. Pierce; didn't you?

A. I, with the others did.

REDIRECT EXAMINATION:

I testified at the first trial that advertising was not on the check. Mr. Pierce said something about making a picture of my place. I hold stock in the Memphis Power and Light Company, in four banks and in other concerns.

Q. I will ask you if you were not asked these questions, and made these answers, in the first trial: "*Answer: No, sir; not a thing was said about advertising until all of this other matter had been completed, and then he said, "We have a publication out and if you have any land that you would sell he said he would like to put it in the paper and advertise the land. Question: Did he say he would give you the paper free? Answer: Yes, sir. Question: And advertisement free? Answer: Yes, sir. Question: Was that before or after you had purchased this unit of stock? Answer: After I purchased it. It was just as he was going away. Question: It was just at he was going away? Answer: Yes, sir; the last thing he said.*" Were those questions asked you, and those answers made by you?

A. Yes, sir.

CLAUDE SHOAF, sworn, testified as follows:

I own and operate a saw mill in Tipton County, Tennessee. Some time in March, 1935, Mr. Pierce, the defendant, came to my mill accompanied by Mr. Roach. He greeted me, "Hello, C. L." I had never seen him before. He said he was representing the Government, selling stock in the TVA or units in TVA. He tried to get me to buy $250.00 worth. Mr. Roach said to Mr. Pierce, "maybe Mr. Shoaf would be interested in your credentials." Mr. Pierce pulled a letter out of his pocket and asked me to get in the car with him. This I did. He read this letter and said it was signed by the President of the United States, that he went to school with Roosevelt. I asked him to let me see the letter but he put it back in his pocket. I don't remember his saying anything when he

put it back in his pocket. Finally he agreed to let me go and went off. He said he wanted to wind up business that day, that he had to "Wire his daily reports to Washington." I went to lunch and they called me from the store—had a store across the road. Pierce was eating a cheese sandwich behind the counter and again insisted that I buy. I gave him a check for $10.00. He wrote the check. It is here in the files. I furnished the check. I read the amount of the check, $10.00. That was all. I did not pay any attention to whom it was payable or anything like that. He gave me a receipt. It was folded when he gave it to me. I did not read the receipt till I heard there was some question as to what he was doing. Nothing was said about advertising in a newspaper on that occasion. He had a bunch of papers, he said he was donating about a quarter million papers in the rural sections of this country. I do not remember whether he said anything about sending it to me. Nothing was said to me about advertising. I had nothing to advertise. I do not advertise much.

Q. What is the name of the community you live in, Mr. Shoaf?

A. Don't have any name.

Q. Did he ask you about your business, or anything, on that occasion?

A. Mr. Pierce seemed to know my business pretty well. He asked me if I intended to do any building. I told him I was figuring on building a gin. He said that was fine; I should give my place a name.

Q. You should give it a name?

A. Yes, sir.

Q. Did you give it?

A. No, sir; he did. He did. He wrote a receipt for Shoafville, out there.

Q. Has that been called Shoafville since then?

A. No, sir; not before or since.

Q. That is the only time it was ever called Shoafville?

A. Yes, sir.

Q. Did you read the paper which he sent you, headlines up here; this part "Shoafville"?

A. I am sure I did.

Q. "C. L. Shoaf, Merchant, Saw Mill and Planter; also, live-stock. Mr. Shoaf contemplates erecting a 3-80 stand gin. He manufactures hardwood lumber; he breeds black angus cattle, deals in live-stock automobile accessories and timber." Did you ask Mr. Pierce to give you that advertisement?

A. No, sir; I did not. He picked some of that wording there from my stationery, I think.

Mr. Pierce said so much I can not remember all he said. He is a pretty fast talker.

CROSS EXAMINATION: When Mr. Pierce, after reference was made to his credentials, requested that I get in the car, I sat down on the front seat, with my feet sticking out of the door. Mr. Pierce read me the letter while I was sitting by him on the front seat, with my feet sticking out of the door. Mr. Pierce read me the letter.

(Thereupon, the letter of identification, Exhibit 2 was read to the witness, who stated that he recalled some parts of it, but not all of it being read to him.)

Q. You mean to state to the Court that Mr. Pierce showed you a letter very similar to the one I have just read you, in which he read any substantial part, that he told you that letter was signed by the President of the United States?

A. That is exactly what he hold me; the letter was signed by the President of the United States; and, he refused to let me see the letter.

There was a bunch of newspapers on the back seat.

I remember Mr. Pierce reading that he was editor and publisher of the Huntsville Daily Register but it would be so unusual for a fellow from Alabama to come up here soliciting advertising that it would stick in a fellow's mind. I do not recall anything being said about advertising on that occasion. I do not remember whether he showed me the bunch of papers that was in the car.

Q. You have testified once before in this case?

A. Yes, sir.

Q. You didn't testify in the last trial?

A. No, sir.

Q. I want you to listen carefully to the questions and answers I am reading, and then to the questions I will ask you: "*Question: Did he show you some papers? Answer: Yes; sir; he said it would be a daily paper, and I think one came out probably every two weeks since he was there. Question: Did he say anything to you about advertising Shoafville? Answer: Yes, sir; he did.*" Were you asked that question, and did you make that answer?

A. Mr. Gwinn, I am sure I did, if I testified that before, but it has been so long I don't remember everything Mr. Pierce said to me; it would be impossible to remember every little detail.

Q. And you testified in that first trial that you finally gave him ten dollars, just to get rid of him?

A. More or less so; yes, sir.

There was nothing to keep me from reading the check I signed nor from opening and reading the receipt, except that I was busy and laid the receipt down and went on about my work. I may have stated in my former testimony that I probably read the check. I do not recall.

THIS WAS ALL THE EVIDENCE INTRODUCED IN BEHALF OF THE GOVERNMENT.

THEREUPON, THE FOLLOWING EVIDENCE WAS OFFERED IN BEHALF OF THE DENFEDANTS:

J. E. Pierce

I am 58 years old, was born in Huntsville, Alabama, have been engaged in the newspaper business for 45 years, working in every capacity from carrier to publisher, and was interested in the newspaper business at the time of the transactions complained of in the indictment and by the government witnesses, being at that time Vice President and Editor of the Huntsville Daily Register; all my newspaper work had been done in Huntsville.

I am now having increased difficulty in hearing as the result of injuries received in an automobile accident at Carlisle, Arkansas between Little Rock and Memphis, last Sunday was a week ago. I was a little hard of hearing before, and this has added a temporary impairment to my hearing. I was jarred up considerably—cut up here (Indicating) and also on the inside of my lip, swollen now, making it difficult for me to talk, also injured my right arm. I will appreciate you gentlemen speaking as loudly as you can.

I am personally acquainted with President Roosevelt, first meeting him at Secretary Josephus Daniels' office in Washington in 1912, Mr. Roosevelt then being Assistant Secretary of the Navy. Mr. Daniels was in the newspaper business. I had met him a number of times at New York in our Associated Press Meetings. Prior to my association with the Huntsville Daily Register I was connected with the Huntsville Daily Times which I established in 1910, and I attended Press Association meetings for twenty some odd years. Mr. Roosevelt when I first knew him was quite young and slender. In my campaign, I never told any one that Roosevelt and I were boys together, or class mates. In a general talk about Roosevelt, I might remark that I knew him when he was a young man, Assistant Secretary of the Navy.

I never made any claim to an acquaintance with Andrew Johnson. He died two years before I was born. I did mention Oscar Johnson, President of the Delta Pine and Land

Company, Scott, Mississippi, and President of the National Cotton Association. I called upon him in his offices in Scott, and he gave me a check in support of the work I was doing. I was specializing in community publicity advertising; advantages of the natural and potential resources of the several communities visited.

Q. Well, you go ahead and state to the Jury the distinction between the natural and potential resources of the different communities, and community publicity advertising?

A. The distinction between natural and potential resources—Community Publicity advertising would have to do with food that a merchant carries, or display advertisements, in box-car letters, and prices; and, merchants such as Goldsmith' and others would feature the different offerings they had to make, plus attractive prices, to interest prospective purchasers. Community resources advertising would have to do with writing up the natural and potential resources of the different kinds of communities, such as the work they are doing; of write-ups of communities by their names, and then a mention who contributed thereto. That is done by Chambers of Commerce and other civic organizations; but, probably not on as large a scale as we conducted it, over Georgia, Alabama, and Arkansas.

Huntsville is 65 miles from Muscle Shoals, and I have been interested in the development of Muscle Shoals for some thirty years, even before the world war, and before there was any bridge or dam across the river.

I am familiar with the signature of President Roosevelt, and that is his signature and that of his daughter, Anna Roosevelt Dall, on the copy of the Huntsville Daily Register of January 20, 1933, which you hand me and which I make Exhibit—— to my testimony.

Wilson Dam, built at Muscle Shoals, east of Florence, about 65 miles from Huntsville, was built in 1919, originally a National Defense and Nitrate Plant; and, then, Power Dam in connection with it they had Munition Plants, Numbers 1 and 2.

J. E. Pierce

Q. Had there been discussion of the possibilities of Muscle Shoals, and development and extension of cheaper power before the Tennessee Valley Authority?

A. Yes, sir; dating back as far as 104 years ago the pioneers of the Tennessee Valley kept up a continuous agitation for development of Muscle Shoals. Those of us who lived in the valley looked forward with keen interest to the day when that mighty development might take place.

Q. Had you been active, or inactive, in the working looking to that development, and the utilization of Muscle Shoals power in the Muscle Shoals territory?

I had been very active in its development, and paper you hand me is a copy of the Albany-Decatur Daily, Albany and Decatur, Alabama, of Date May 5, 1921. Decatur is 25 miles from Huntsville by rail and 35 miles by road.

I had no connection with the Albany-Decatur Daily but was then connected with the Huntsville Times. I am the J. E. Pierce whose picture appears in the Albany-Decatur paper of the date stated and the subject of the write up in that paper. I make this paper Exhibit—— to my testimony.

Q. I am not going to take the time to read all of that—all that article, but I am going to ask you to begin at the cross-mark there; that is, just a part of the article, and read from there to the close of it, into the record, so that the stenographer can get it:

A. *"He is active, both in affairs of the Church and State, being Clerk of the First Baptist Church, with which he united as a member in* 1896, *and in politics he is a leader of the moral forces, championing the causes of prohibition and democracy. He is enthusiastic on the subject of Good Roads, Better Schools and Churches. He is a strong advocate of better understanding and more cordial relations between capital and labor. In Commercial, industrial and agricultural affairs the people have a strong ally in Mr. Pierce. He was elected alternate delegate from the Eighth Congressional District, to the National Democratic Convention at San Francisco in* 1920. *In* 1921 *he is leading an aggressive*

campaign for the development of North Alabama through the success of Muscle Shoals power, good roads building and maintenance and crop diversification through the Tennessee Valley Section of North Alabama."

A. I believe that would read "For good roads building and maintenance, agricultural diversification throughout North Alabama."

Q. And that was published in 1921?

A. Yes, sir.

Q. With reference to your activities in the development of Muscle Shoals?

A. Yes, sir.

Q. Mr. Pierce, have you been active, or inactive in connection with road improvement?

A. Very active, from boyhood.

Q. What has been the extent of your activities?

A. Officially, as Vice-President of the Alabama Good Roads Association, back in the days when we were pioneering in Alabama to get ourselves out of the woods, and off the dirt roads; from that had become one of the founders of the United States Good Roads Association, of which I am now a member of the National Advisory Council.

Q. Who was the President of the United States Good Roads Association?

A. John H. Bankhead—Senator.

Q. And the Director General?

A. J. A. Rountree.

Q. I hand you a document and ask you to examine it, and state what it is?

A. That is a certificate of membership, designating me as a member of the National Advisory Board.

Q. Of what?

A. Of the National Good Roads Association.

Q. Will you make that an exhibit to your testimony?

A. Yes, sir.

Accordingly marked "Exhibit C-85-3" to the testimony and will be found among the exhibits hereto.

J. E. Pierce

I have never had any official connection with the Federal Government, and never claimed to represent the Government or the TVA and never made such a claim in my canvass of the counties nor in the transactions involved in this indictment.

We got our first special community advertising edition April 2, 1933, and from early in 1933, with the exception of 1936, I have been engaged in that work. We canvassed 17 counties in North Alabama, 46 counties in Mississippi, some 29 or 30 counties in Tennessee, and about the same number, or more, in Arkansas, calling on, I would say possibly fifteen thousand, or more people, and doing business with between eight and ten thousand persons. We have prepared copy, and solicited funds, to take care of special editions of our own paper, or other papers, covering approximately 130 counties.

In working for our own people, I carried a letter from the paper itself, signed by the President of the company, my son, William H. Pierce, one of the attorneys in this case, and that is the original letter which has been introduced in evidence and several times read to the jury. That letter was generally used, being read to 90 per cent or more, of the prospects. I read the first paragraph of the letter which identifies me as a private individual, not a public official.

"This will introduce J. E. Pierce, Editor and Vice-President of the Huntsville Daily Register, Huntsville, Alabama."

I never told any body that this letter, signed by my son as President of the Publishing Company, was signed by the President of the United States, and I can not concieve of any one whom I read the letter, conceiving, much less expressing, that it was signed by the President of the United States. That was the only letter I read to the prospects, and if any one formed the conclusion that it was signed by the President of the United States, I did not intend to convey such an impression. I never refused to submit the letter to any one; on the contrary, I insisted that they read it.

I never had any request for Government credentials, and

would not have submitted this letter as a government credential.

We carried no maps with us, unless a road map obtained at some filling station for our use in locating and following roads, and we never exhibited any map with black lines or any other kind of lines to a Government witness. We carried a bundle of Huntsville Daily Registers, showing the character of work we were doing in the different counties, also a special card or folder, showing activities around Muscle Shoals and Huntsville, Alabama, and that letter of identification. The letter bears date, April 21, 1934, and the statements therein that I am a deacon in the Baptist Church, that I erected the office buildings, and was a director in the hotel, was one of the owners of the bank building and substantially interested in farming, were correct and accurate statements. I had been interested in farming from boyhood—from the time I used to plow a steer.

That letter correctly set forth the character of the work in which I was engaged. It designated the advertisements as the Muscle Shoals series because at the time the effort was confined to the territory from the Georgia line to the Mississippi River; and Northern Alabama, Mississippi and Tennessee. The campaign began at my home in Huntsville, and we canvassed 17 counties in North Alabama, ending our canvass in that state December 19, 1933, and then began at Corinth, Mississippi, canvassing 46 counties in that state, and ending our work in it on March 4, 1935.

On March 5, 1935, we commenced our work in Tennessee, beginning at Selmer, McNairy County. Prior to going to Gibson County, we had canvassed, McNairy, Shelby, Tipton, Lauderdale, Dyer, Haywood, Lake, Obion, and Weakley Counties in Tennessee. All these counties were located in the same section of the State as Gibson, and copies of our paper had been mailed to these counties.

In addition to regular subscribers, copies of our paper were sent to contributors to our program, to members of Congress, Governors of State, to Chambers of Commerce in strategic locations, and to others. The number of sponsors

in a county depended on the size of the contributions. It would run from 60 to 100, and papers had been mailed to sponsors, in West Tennessee Counties before we entered Gibson County, several hundred copies of the paper, showing the character of the work in which we were engaged, having been mailed to West Tennessee counties before we went to Gibson. All transactions involved in the indictment, except three, as I recall, those with Dr. Conyers, Mr. Cherry, and Mr. Robinson, in Crockett County, relate to Gibson County, Dyer, Weakley, and some of the other counties, are contiguous to Gibson County. Instructions were given that the paper be sent daily to sponsors for twenty weeks.

Q. Mr. Pierce, I think the complete list of the Dyer and Crockett have been introduced. If not, it may be added. I hand you a paper and ask you to state what it is?

A. A copy of the Huntsville Daily Register, of date Sunday morning, June 16th, 1935.

Q. Does that contain a write-up of Dyer and Crockett Counties?

A. It has a page, and also a write-up starting on the front page.

Q. Was that particular paper published before, or after you went into Gibson County on that date?

A. Published after I went into Gibson County—Gibson County was in May, and this is in June.

Q. Did you complete your twenty advertisements of both Gibson and Crockett?

A. Yes, sir.

Q. I hand you another paper and ask you to state what date it is?

A. Thursday, July 11, 1935..

Q. What does that advertise? What county?

A. Dyer and Crockett.

Q. Is that the same reading matter that is on the other that you looked at?

A. No, sir.

Q. Just go on, and describe, now, the general features of these page advertisements, devoted to the counties.

J. E. Pierce

A. We would usually start off the campaign after the canvass was completed, by the write-up of each of the sponsors, starting in on the front page, accompanying the copy of the first page ad. They would have, next week, a copy of the page ad, which would be changed, and so on throughout the entire series until they had a twenty-page ad. as to the resources of the county and the advantages it had to offer outsiders to become a part of its citizenry, or business activity.

Q. Now, just to get the idea clear to the Jury, I notice here some reading matter in bold type, and then a series of names down there. Will you explain that arrangement?

A. That is a page ad, introducing Dyer and Crockett Counties. "*These counties, in Tennessee, match, we think, any counties in the whole United States.*" And then there are the reasons given, why that is true, in other reading matter to the left and to the right, and then the names at the bottom of sponsors—names of men, or people, who underwrote the series of twenty advertisements.

Q. And they are the persons whom you saw, and from whom you obtained the contributions?

A. That is right.

Q. Now, you have a large line there "West Tennessee Stands For . . ." What does that say West Tennessee stands for?

A. First, Cheaper Power; second, Lower Taxes; Third, Better Roads."

Q. What did those three things have to do with your advertising campaign; or, what part did advertising play?

A. They were the common objectives for which we had been fighting from boyhood.

Q. I am going to pass these papers to a later time, so as not to delay the examination of the witness. Now, Mr. Pierce, was the main reading matter; that is, the part advertising the county and boosting the county or counties, was that changed, or was it the same reading matter throughout the twenty publications?

A. That was changed every week, except as to names of

sponsors; they remained the same.

Q. Then, if I understand you, this reading matter here, down about there, was changed once a week for twenty weeks?

A. That is right, with different illustrations.

Q. And there was no change in the names, or advertising of the sponsors?

A. Sponsors remained the same.

Q. Now, you have Dyer and Crockett here on the same page. Explain how that occurred?

A. Well, that occurred frequently in territories where the population was such that there were not enough prospects to raise sufficient funds to carry the edition for one county, as was the case in Gibson, Dyer and Crockett, and in some localities it was necessary to put on two or three or four or five counties, in order to get up the funds to carry it.

Q. Who prepared the advertising, or the matter in these papers?

A. That was prepared at Huntsville, Ala.

Q. Who did the writing?

A. My son did some, and I did part in my office.

Q. The paper did it?

A. Yes, sir.

Q. Who prepared the advertising matters under the names of the sponsors?

A. I did.

Q. Where did you get your information?

A. From each sponsor; from each person contributing.

Q. Was there any special, or extra charge made for these individual advertisements of the sponsors?

A. None whatever. That was gratis. And, the money each sponsor put up was to carry the community publicity advertising.

Q. And you didn't sell the sponsors space on that page advertisement?

A. No, sir; I never have.

J. E. Pierce

Q. Any charge made for the paper during the five months?

A. Not to the sponsors.

Q. What was the cost to the county, or how much funds did you raise for one of the page advertisements?

A. $2400.00. We took care of a thousand, and charged that to Good Will, leaving $1400.00.

Q. And that $1400.00 was the amount of the funds obtained from the canvass of a county for twenty of these page advertisements?

A. County, or counties; and, if we failed to raise the amount we would have to underwrite it ourselves.

Q. Take the balance?

A. Take the loss.

Q. Now, in your canvass of these counties, Mr. Pierce, were you soliciting funds for this publicity advertising, or were you soliciting funds for a TVA project or enterprise?

A. Soliciting funds for the Community Publicity Advertising and so stated to each and every sponsor at the time funds were solicited?

Q. Did you solicit funds in any instances that you recall from any persons involved in this indictment, or who testified as witnesses for the Government without demonstrations made to them with these newspapers?

A. No, sir.

Q. What use was made of the papers? What was the object in showing these papers?

A. To show the character of publicity advertising we were carrying on, not only in the community being visited at the time, but also for Alabama, Mississippi and counties in West Tennessee.

Q. How many papers went to make up, or approximately, if you know, the bundle of papers that you carried with you?

A. There were 17 counties in Alabama and 46 in Mississippi, and I suppose anywhere from 15 to 20 or more different editions at a time.

Q. Did you carry the full paper, or the full page carrying the advertisement?

A. We would carry the page, or four pages of the section carrying the other advertising.

Q. Four pages of the section?

A. That is, the front page and second page would be one sheet, and the back page would be another, next to it—being four pages.

Q. Did your paper give publicity to the growth and development of the Tennessee Valley Authority?

A. Yes, sir.

Q. Reference is made in that to papers delivered to various prospects?

A. We furnish matter furnished us by the office at Knoxville, Tenn., and Washington.

Q. Did they have an office that sent out advertising from there to the Tennessee Department?

A. Yes, sir; they furnished not only us, but other newspapers with that material for publication, as general information for the public.

Q. Mr. Pierce, when you called on a prospect, I believe you said that in every instance this bundle of papers was carried to show what they might expect?

A. Yes, sir.

Q. What was said about advertising individual parties?

A. Any and all contributors had a right to advertise anything they wanted in that edition free of charge, be it land, live stock or personal property, or whatever it might be.

Q. Mr. Pierce, this $1400.00 that is obtained from a county or group of counties, if I understand it, covered not only the publication of these advertisements of twenty issues but also the preparation of the advertising itself?

A. Yes, sir; and the expenses of the solicitation campaign.

Q. That was the entire cost to the county, or group of citizens that underwrote the advertising?

A. Yes, sir.

J. E. Pierce

Q. Was the advertising of the county—for instance, the county of Gibson, circulation of that advertising, restricted to Gibson County, or the immediate territory around Huntsville, Ala., where your paper was published?

A. No, sir; general.

Q. I believe you have stated about how you mailed out the copies to different folk.

A. Yes, sir.

Q. I hand you a bundle of papers, here, made an exhibit, and ask you to look at the advertisement there, on that.

A. That is a page advertisement of Gibson County, Sunday, June 9, 1935.

Q. What is the heading of that advertisement?

A. "Gibson County is forcing business forward. Second largest diversified farm county in the whole United States."

Q. Look at the publicity matter. Any names of sponsors of the publicity matter in that advertisement?

A. Yes, sir; "Gibson County whose area is 633 square miles, attributes its growth and development largely to diversification in farm enterprises. By reason of such practice the people here weathered the storm of the recent depression, emerging with no scars and but few scratches. We realize the hazards which cloak a one-crop county, and modestly do we make mention of the fact that Washington authorities cite diversification as evidence of keen foresight and good business judgment on the part of the farming citizenry of this county.

Industries are found scattered over the county, but until cheaper hydro-electric energy and lower taxes are had they probably will remain few in number. That is one of the reasons we are so eager for and determined that both of these much-needed, well-deserved benefactions shall be realized at the earliest date possible. We have, nevertheless, many other inducements to offer industrial concerns seeking a location in the heart of the Southland which we know are attractive. Better Roads are always an ambition of Gibson County folk. Though we can, and do boast of two Federal Highways passing throug our county, we are ever in the market for more

funds for road building purposes. The lateral roads provide good connections throughout the county, but we frankly admit they are not in as good condition as they should be. Vigorously are we preparing to improve them. Within another twelve to twenty-four months the whole system is expected to blossom into an unexcelled network."

Q. And that advertisement stated Gibson was what kind of a County?

A. Second largest diversified farm county in the whole United States.

Q. (Here Mr. Gwinn reads balance of advertisement, eding with the words:

"Watch our growth, or better still come to Gibson County and take a part in its up building."

(See exhibit)

MR. GWINN: I hand you a document and ask you to examine it and state what it is.

GEN. McCLANAHAN: I want to make the same objection to this as before your Honor, and will ask the jury to retire.

THE COURT: I will make the same ruling.

Q. State to the Court and Jury what that is, Mr. Pierce?

A. That is an affidavit prepared by the Advertising Checking Bureau, Inc., of Chicago, Ill., accompanying a photostatic copy of the page I have just read to the Court and jury.

Q. Is that the photostatic copy, or a photograph reduced to—

A. I understand it to be a photostatic, or reduced photograph of that page, and then reduced it to this.

Q. All right, go ahead.

Q. Shall I read it?

A. Yes.

A. "Chicago, Illinois, State of Illinois, County of Cook, TO WHOM IT MAY CONCERN: Attached hereto is a reproduction which we have made by the lithographic process of a full size page which

appeared in the Huntsville, Alabama, Register, June 17, 1935. As will be noted, the page is a publicity page of Gibson County, Tennessee, and is underwritten by a representative group of its citizens. The Best Idea Servive of the advertising checking bureau is an alert organization of advertising experts which combs the field for material of over one thousand newspapers of the Nation, and it has selected this particular page of Gibson County, Tenn., which appeared in the Huntsville Daily Register, under date of June 17, 1935, as being the most outstanding and unique piece of public spirit, in the way of advertising, we have observed in any newspaper during the month of June, 1935. It is a splendid piece of work of local public spirit, and such a campaign of publicity has real possibilities.

Congratulation are in order, and the presentation of this kind of valuable publicity or advertising is in a class by itself. We know of no other newspaper rendering this service, but other papers might reasonably be interested in emulating same."

Signed "Harris C. Bennett, as Director, Best Idea Service of Advertising Checking Bureau, Inc., of Chicago, Illinois. Sworn to and subscribed before me this 29 day of Nov., 1935. Attested by Michael Motto, Notary Public. My Commission expires August 2, 1937."

MR. GWINN: Will you make that an exhibit.

THE WITNESS: I do.

Accordingly marked "Exhibit C-26-3" and will be found among the exhibits hereto.

Q. That is a reproduction, on a smaller scale, by lithographic process of the advertisement you have just read to the Jury?

A. Yes, sir.

Q. And you say that was sent out to over a thousand newspapers throughout the country?

GEN. McCLANAHAN: I object to that, unless he knows that to be true.

THE COURT: Objection sustained.

Q. Have you any connection, or did you have any connection with that advertising bureau or Checking Bureau, at Chicago?

A. No, sir.

Q. Did you know that that was going to be done with that advertisement?

A. No, sir; we didn't know a thing about it until it came through the mail.

Q. Was that page, that was given that recognition, that you have just read, was that the only one of the publicity advertisements that was given Gibson County as a result of the contributions made by its citizens?

A. No, sir; we had nineteen other full pages.

Q. 19 other page advertisements?

A. Yes, sir.

Q. What did that cost the sponsors or contributors to the Gibson County page?

A. That contribution cost them $1400.00, cash fund; and, we took care of a thousand dollars, making a total of $2400.00.

Q. In other words, you raised $1400.00 in Gibson County for this page advertisement?

A. No, sir; we didn't raise that much, because the campaign was brought to a halt, because of this unfortunate trouble at Medina, and we had to underwrite the balance.

Q. But you went ahead and completed it?

A. Yes, sir.

Q. Mr. Pierce, did you complete the advertisement and send out the papers to the sponsors in Gibson County and the other Counties as you had agreed?

A. Yes, sir.

Q. In all instances?

A. Yes, sir.

Q. And I believe you say you did that notwithstanding the interruption of the campaign in Gibson County?

A. Yes, sir; that was a public duty we owed them, and we discharged it.

J. E. Pierce

Q. Mr. Pierce, was this advertising campaign conducted by you in good faith and belief that you were giving value received, or—

A. (interrupting) Yes, sir.

Q. Or were you seeking donations without any work in return?

A. No, sir; it was the hardest job of my life, was this specialized Community Publicity Advertising.

Q. Mr. Pierce, some of the witnesses have testified that they thought they were dealing with an agent of the Government, or a representative of the TVA, or something to that effect. Did you, at any time, intend, by anything that you said or did to create the impression that you were an official connected with either the Tennessee Valley Authority, or the Federal Government?

A. No, sir.

Q. In the course of your canvass, either in Gibson County—and, in counties prior thereto, or since, was inquiry ever made of you if you had any connection with the Federal Government, or any of its agents?

A. Yes, sir; and promptly denied.

Q. You say that you—

A. (interrupting) Properly denied.

Q. Did you tell them what you did?

A. Getting up newspaper advertising; had no connection whatsoever with either the Government or TVA. I remember distinctly one of the last inquiries was by a merchant out from Dyersburg, asked me the question in the presence of, I believe, it was J. C. Ray.

Q. And you said that you were engaged in a private business enterprise?

A. Yes, sir.

Q. In soliciting funds to pay the cost of these page advertisements, did you discuss Roads, and Cheaper Power, and matters of that kind?

A. Yes, sir; general discussion of Cheaper Power, Lower Taxes, Better Roads, and general up-building of the Community through the attraction of new people, money, indus-

tries, improving schools and churches, and better prices for farm products, and general public development. That was the program.

Q. Did you have any reason to believe that any of these sponsors, or any of these persons from whom you solicited funds would confuse that with official government enterprise?

A. No, sir.

Q. Mr. Pierce did you ever sell, or offer to sell, stock in the TVA?

A. No, sir.

Q. Or TVA units?

A. No, sir.

Q. When was the first time you ever heard the expression TVA units?

Q. And you had never heard it before?

A. Never heard it before; didn't know what it was when I first heard it.

Q. Was there anything said about "units" in your conversation with Government witnesses, or anyone else?

A. Yes, sir.

Q. Go ahead and state the Jury about what?

A. Page advertising was taken, 2 units, at $10.00 each, to underwrite the twenty weeks program. We would announce to each sponsor, at the time of discussion, that we were taking care of $1,000.00 of the amount; and, we were soliciting contributions of $10.00 a unit for the remainder. They could take one, two, three, four or whatever they wanted to, according to their ability, or opinion. I illustrated that by a man rolling a log up a hill; we can all help a little and get the log over the hill easier than one or two of us.

Q. Did you ever seek funds at any time, anywhere, for building of power lines?

A. No, sir.

Q. Or point out to anyone, or tell anyone that they would get power, or TVA, if they contributed; and, wouldn't get it if they didn't?

A. No, sir.

J. E. Pierce

Q. Now, Mr. Pierce, what was your plan of operation when you entered a new county to solicit funds for page advertising?

A. Either go to the Sheriff of the County, or Mayor of the City, or Secretary of the Chamber of Commerce, if they had one, to get them to appoint, or designate, some responsible person to go with me and show me the way over the county, and introduce me to the respective citizens, banks, lawyers, doctors, school-teachers, farmers, merchants, ginners and people in all lines of public activity.

Q. In soliciting funds, did you restrict your activities to the poor and uneducated, or to the substantial, and what you thought were the better informed citizens?

A. We have refused money time and time again from people we thought were not able to contribute, preferring and desiring to confine our operations to people able to contribute and help us promote the cause of cheaper power, lower taxes, and better roads.

J. E. Pierce, Continued

The paper you hand me is a copy of the Huntsville Daily Register, dated June 2, 1935, one of the series containing a page advertisement of Gibson County, and a write-up of the county, different from the advertisement, starting on Page 1 of the paper.

A. This is an article starting on page one, second banner line, reading, "Gibson County in Campaign."

MR. GWINN: Can the jurors see the banner line from here?

Q. Is there any further headline there, and if so, read it?

A. Yes, sir, the third deck in the third column *"Gigantic Publicity Effort to be directed toward low taxes, cheaper power, roads. People sincere Tennessee agricultural region of abounding resources. Wonderful future is seen ahead. Progressive County is growing fast and development in all directions to be speeded."*

Q. Is there a newspaper article following that?

A. Yes, sir, starting on the front page and continuing

to other pages, with an editorial about the publicity in Gibson County.

Q. Mr. Pierce, in counties that you had gone into prior to going into Gibson County—completed the canvass—I believe you stated yesterday afternoon that when the county was completed, that you began the publication of those papers and sent them out to the sponsors in that county.

A. Yes, sir.

Q. Papers were sent for five months to the contributors for the advertisement?

A. Yes, sir."

> *"The paper you hand me which I make an exhibit to my testimony, is a copy of the Huntsville Daily Register, dated April 25, 1935 carrying a publicity write-up of Shelby and Hardeman Counties and a page advertisement of these counties, stating that they were seeking "cheaper power, lower taxes and better roads in rural communities."*

Papers had been mailed to the sponsors of the campaign in Shelby and Hardeman before we went into Gibson County.

The paper which you now hand me, and which I make an exhibit to my testimony, is a copy of the Huntsville Daily Register, dated April 21, 1935 containing a write-up of Tipton, Lauderdale and Haywood counties, and stating among other things that these counties have joined in the "active stride to do all they can to help establish cheap Muscle Shoals power, lower taxes and better roads throughout that section."

The next paper you hand me, is a copy of the Huntsville Daily Register, dated May 19, 1935, containing a page advertisement of Obion, Lake and Weakley counties.

The paper you now hand me is a copy of the Huntsville Daily Register, dated March 31, 1935, containing a page advertisement of McNairy, Chester and Fayette counties, and the first copy of a paper advertising Tennessee counties. That paper has a TVA headline. The second banner headline

is, "West Tennessee lines up for Shoals power", and there is a write up of these counties, and the sponsors are mentioned in the page advertisement of three counties.

The first banner headline in the paper dated, March 21, 1935, in box car letters, is "T. V. A. Chief". The second banner line is: "West Tennessee lines up for Shoals Power".

Copies of the papers were mailed to sponsors of the advertisements in the several groups mentioned before we entered Gibson County or had completed our work there. We completed our canvass of Gibson County May 22, 1935.

This newspaper (March 21, 1935), showed the first county we had worked, and was on the outside of the bundle of papers we carried. We would show them how we had completed the other counties and how theirs would look when it came out. The original bundle of papers was introduced at the first trial, some of them are here now, but not the complete bundle.

Advertisements had been published for 11 West Tennessee Counties, 17 in North Alabama and 46 in Mississippi before we entered Gibson County, and we began this advertising campaign prior to the establishment of the Tennessee Valley Authority.

Q. Mr. Pierce, in its general features, was the advertising campaign substantially the same after, was it before the passage of the Tennessee Valley Authority Act?

A. Identically the same except the names of the Counties and the sponsors underwriting the campaign.

Q. You have continued, after losing your paper—

GENERAL McCLANAHAN: If your Honor please, I haven't objected, but Mr. Gwinn continues to lead him.

THE COURT: Yes, objection sustained.

GENERAL McCLANAHAN: And makes suggestive answers to him.

MR. GWINN: I will refrain from that.

Q. In what business—I believe you stated yesterday you were not publishing the Huntsville Daily Register now?

A. No, sir, I have ceased operation because of this prosecution, sir.

GENERAL McCLANAHAN: I object to that.

Q. In what line of business are you now engaged?

A. The same line of work; specializing in newspaper community publicity advertising.

Q. Where?

A. In Arkansas.

Q. How long have you been engaged in that work in the State of Arkansas?

A. About a year and five months or more.

Q. What is the character of the advertising that you are now working on in that state?

A. The same advertising that I was carrying in the Alabama paper for the people that I represent; the owners of the paper and other people now."

I now make an exhibit to my testimony of the receipt I use in my Arkansas campaign, this being Exhibit———.

Q. Will you read the receipt, omitting the names there, so as to get the form in the record?

A. It has the caption "The Pierce Newspaper Publishers' Service. Huntsville, Alabama. Dollar mark. Received of blank, towards campaign of 20 publicity pages in the blank advertising the natural and potential resources of blank County, and its environs, with the view of attracting new people money and industry. The 20 pages will appear within 60 days or thereabouts in a distribution of 10,000 copies." This is signed, "The Pierce Newsaper Publishers' Service." and "By blank line, Publicity Director."

Q. Mr. Pierce, I hand you a paper made an exhibit in the last trial and will ask you to make it again an exhibit to your testimony, and state what it is.

GENERAL McCLANAHAN: I object to that because it is apparently nothing but a plain circular.

THE COURT: I admitted it the last time?

MR. GWINN: Yes, sir.

GENERAL McCLANAHAN: Yes, sir.

THE COURT: Same ruling.

A. (The witness) May I finish reading this?

THE COURT: Yes, sir.

A. On the left hand side of that receipt Mr. Stenographer, "I am glad to contribute my support and influence to this publicity effort and I favor cheaper power, lower taxes, better roads and adequate drainage."

Q. All right, what is that other paper?

A. This is a copy of a letter from Senator Capper of the State of Kansas, written from the United States Senate, Washington, D. C. under date of June 6, 1938.

> *"The Brinkley Argus,*
> *Brinkley, Arkansas.*
> *Dear Sir:*
>
> *I have received a copy of your special issue of June 22nd and wish to congratulate you on the many attractive features of the publication. Your page statement of 'Arkansas the Wonder State' is a most interesting story of your State's superior attractions.*
>
> *The people of Brinkley ought to very proud of the Argus. You are certainly doing a fine service for them in bringing the marvelous resources of your section to the attention of the American people.*
>
> *Wishing you great success, I am, sincerely yours, Arthur Capper."*

Q. Who prepared the material for the special edition of the Brinkley Argus at Brinkley, Arkansas to which this letter of Senator Capper related?

A. I did and also solicited the funds to underwrite it

Q. Was that campaign, and the character of the advertising, essentially the same or different—

A. The same.

Q. —from the publicity advertising campaign conducted by you in West Tennessee?

A. Identically the same, except for the name of the paper and the sponsors.

Q. I believe you stated yesterday that copies of the papers containing these advertisements in West Tennessee

were mailed to Congressmen, Senators and Governors of different states?

A. Yes, sir.

Q. And Chambers of Commerce?

A. Yes, sir.

Q. Was that done with these Arkansas papers?

A. Yes, sir.

Q. And this is copy of Senator Capper's letter?

A. One among many, yes, sir.

Q. Who circulated that and got it out in the form of a circular?

A. The publisher of the Brinkley Argus.

(Exhibit 28-3 received in evidence.)

MR. GWINN: I think I should call your Honor's attention to a document that was not introduced at the former trial, relating to the advertising done by Mr. Pierce in Arkansas. This is copy of a resolution by the Legislature of the State of Arkansas, which I offer for the same reasons.

THE COURT: May I see the document?

MR. GWINN: Yes, sir, I will connect it up by testimony with the work of Mr. Pierce, showing that it relates to that work.

(Examination of document by Court)

GENERAL McCLANAHAN: I object to it.

THE COURT: Technically, the objection of the Government to this document is well taken, but in as much as the defendant is here on trial in a criminal case, and in his defense is attempting to show that he has been, for a long time, both before and after these transactions occurred, engaged in the advertising business, the Court, in the interest of substantial justice, will set aside any technical questions and admit this document.

GENERAL McCLANAHAN: May I state my objections in the record?

THE COURT: Yes, sir.

GENERAL McCLANAHAN: My objection is this: there is no evidence that this was written—

THE COURT: Brother Gwinn said he would connect it up, the particular paper mentioned.

MR. GWINN: If your Honor please—

THE COURT: Am I correct?

MR. GWINN: Yes, sir. The first paragraph is all I want to read. I want to hand it to your Honor—I beg your pardon General McClanahan. I want General McClanahan to see it.

THE COURT: All right, paragraph number one.

MR. GWINN: It relates to conversations and of course I am not offering that because it is not competent.

THE COURT: I have read it.

(Examination of paper by General McClanahan)

GENERAL McCLANAHAN: If your Honor please, I do want to vigorously object to this. This is so far afield. After all, if the Court please this man is on trial for something that happened in 1935, and what he is doing in 1939 of course has nothing to do with this trial. Now this is a carbon copy of a letter—

THE COURT: Let me see it. It is signed isn't it? It purports to be signed.

(Court examines document)

THE COURT: The objection of the Government attorney is well taken on a technical basis, but in the discretion of the trial Judge it is deemed wise to permit this to be received in evidence in a case of this character.

Q. Did this resolution by the Legislature of the State of Arkansas refer to publicity advertising that you had prepared as part of your campaign over there?

A. Yes, sir.

Q. And this is part of the statement which I now read from the editor and publisher, signed by the editor and publisher of the Sheridan Headlight, signed by Dalton V. Walker, Editor and Publisher?

A. Yes, sir.

Q. Are you familiar with his signature?

A. Yes, sir.

Q. Were you associated with Mr. Walker in the prepa-

ration of the special edition referred to in this resolution?

A. Yes, sir, I had exclusive charge of soliciting the funds.

Q. Who accompanied you in your solicitation?

A. Mr. Roach.

Q. Anyone else?

A. Yes, Mr. Stevens of Prescott, Arkansas and Mr. McDonald of Benton, Arkansas.

MR. GWINN: I want to read into the record the competent part. I am not asking that the second paragraph go in there. (Reading)

> *"To whom concerned:*
> *This certifies that J. E. Pierce, Publicity Director of the Pierce Newspaper Publishers' Service, Huntsville, Alabama, has successfully completed a 20-page 10,000 copy special edition for us under date of February 2, 1939. The effort was a success in every way, so much so that the Arkansas Legislature adopted resolutions commending it, and letters of endorsement were received from United States Senators, Representatives, Governors of States and other sources."*

Q. Now, what is the Sheridan Headlight?

A. That is a newspaper published at Sheridan, Ark.

Q. And is a different paper from the Brinkley Argus?

A. Yes, sir.

Q. Will you make that an exhibit to your testimony?

A. I do so.

(Exhibit 29-3 received in Evidence)

MR. GWINN: I want to read the Resolution now into the record. You read it, Mr. Pierce.

A. "House Resolution No. 32.

WHEREAS, there has been placed on our desks a copy of a special edition of the Sheridan Headlight, edited and published by Representative Dalton V. Walker, and

WHEREAS, this edition contains much favorable publicity advertising the natural and potential resources of the

State of Arkansas, and

WHEREAS, this special edition has been distributed to the Persident of the United States, every United States Senator, every Representative every Governor in the United States and Chamber of Commerce of the United States, and

WHEREAS, the State is receiving much favorable publicity and comment,

THEREFORE, be it resolved that the House of Representatives of the 52nd General Assembly, commend Mr. Walker on his efforts in publishing this splendid edition, which has done much to advertise the State of Arkansas. Adopted February 15, 1939." Shall I read the certificate?

Q. No. It is certified to by the Secretary of State?

A. Yes, sir.

(Exhibit 30-3 received in evidence)

The post card folder (Exhibit——) contained a picture of the Tennessee Valley Bank Building, a 7 story office building in which I was one of the directors and owners; the Russell Erskine Hotel, a 12 story hotel erected at a cost of half a million dollars in which I was a director and one of the owners; the Times Building, a 12 story office building, which we owned through a corporation of our own, and a picture of my home.

We completed our canvass of Gibson County on May 22, 1935 and then went into Crockett County, In the eleven West Tennessee counties canvassed by us before we entered Gibson County, I suppose several hundred persons contributed to our program. I have not calculated the number but could do so.

Practically all the government witnesses from Gibson County live in the Medina neighborhood, but that is not the only community I canvassed in that county. I had canvassed the entire northern part of the county before I went into the Medina neighborhood. Mr. Robert Ross, who had been with me in my canvass of the county, had to assume other work and was not with me when the Medina community was canvassed.

Q. How near was your canvass completed of Gibson

County when you went into the Medina neighborhood?

A. Practically finished.

Q. What was the purpose, the object or the purpose of the advertising campaign that you were conducting in Gibson County and which you had conducted in other counties before you entered Gibson County?

A. The same as it had been in the other West Tennessee Counties, Alabama and Mississippi, to publicize the natural and potential resources of the several counties or communities and to attract new money, people and industry by advancing the opportunities that the community had to offer. Wherever we went we had to build up a sentiment, especially lower taxes and cheaper power. It had been my theme song for a quarte rof a century, and it had become an obsession or second nature with me to try to help the communities by promoting the better things that each community had.

Q. In soliciting funds for these advertisements in the county or group of counties, did you claim to be connected with the Federal Government or the TVA in any way?

A. No, sir.

Q. Did you discuss power development, cheaper power, in talking to the persons from whom you were soliciting funds?

A. Yes, sir.

Q. Why?

A. Because I had been interested in it for more than a quarter of a century; interested in the development of Muscle Shoals; and cheaper power to my mind was one of the essentials that would help bring about community development. It didn't make any difference whether it was Muscle Shoals power or who had the power, just so it was cheaper; so the people in the rural sections might have the advantage of cheap electricity.

Q. In what respects, if any, did you think your campaign and publicity advertising would promote cheaper power and road improvement?

A. Being myself a local publisher interested in those objectives, to get the people interested in bringing about the

realization of these objectives I was promoting.

Q. Did you use the expression "TVA units" at any time during that campaign?

A. No, sir.

Q. I don't recall whether I asked you this question or not; When was the first time you heard that expression?

A. When this lawsuit started.

Q. Did you use the term "units" in soliciting funds for your advertising campaign?

A. Yes, sir.

Q. In what connection did you use the word "units?"

A. There were 240 units in the page for the 20 weeks, at ten dollars a unit, amounting to $2400.00. We would take care of $1,000.00 of the amount, leaving $1400.00 to be underwritten by any county or group of counties in a given campaign, and those units were sold on the basis of ten dollars per unit. No contribution would be accepted for less than ten dollars, but the contributor had the right to contribute any amount he wanted, in even numbers, above the minimum amount of $10.00. He could take any number he wanted, according to his ability and interest in the project.

Q. What would have been the regular cost of the page advertisement for 20 issues in your Huntsville paper?

A. That character of advertising would have been $120.00 a page.

Q. And 20 pages would be—

A. $2400.00."

Mr. Roach accompanied me throughout my campaign in West Tennessee. I paid him on a mileage basis, six cents a mile. He owned his car.

Q. What part did he take in the presentation of your plan?

A. He would hold the papers for me while I would demonstrate to the prospect the character of work we were doing and had done in the various counties, and the work we proposed to do for them, and any other thing, such as handing me a paper or a folder from the car and in the car.

Q. In presenting that plan of advertising, did you make

the demonstration and point out what had been done in other counties?

A. To every person called on. We would demonstrate the proposition by using these papers, to every prospect called on, whether they contributed or not.

Q. What did you point out in those papers to the person from whom you solicited funds?

A. The advertisements that we had carried in other counties in Alabama, Mississippi and West Tennessee.

Q. What was the size of the advertisements you pointed out?

A. Page advertisements.

Q. Did you discuss the question of advertising or the value of advertising with the persons upon whom you called?

A. Yes, sir, in a general way we discussed the value of advertising, selling a community was just as essential and important as selling merchandise through advertising.

Q. What representation, if any, did you make to the donor or subscriber as to advertising any property that he might have to sell?

A. Anything he had to sell was supposed to be carried free in the write-ups. We would give them that, listing their names as sponsors of the campaign.

Q. In introducing yourself, or when you were introduced, state whether or not you claimed to be a Government official, or the editor and publisher of a newspaper?

A. The editor and vice-president of the Huntsville Daily Register.

Q. Was that the only newspaper you carried with you?

A. Yes, sir.

Q. Mr. Pierce, you have been present at all of the former trials?

A. Yes, sir.

Q. Were any newspapers made exhibits that contained maps or anything, and red lines?

A. No, sir, I never heard of the red lines until yesterday.

Q. Mr. Pierce, I believe I asked you yesterday, did you have a map or a book of maps that you exhibited—three I

believe it was—according to a government witness who testified here?

A. No, sir.

Q. What was exhibited to the prospects?

A. A bundle of newspapers carrying these page advertisements.

Q. Was that same or identical bundle of papers exhibited to Joe Luckey, Anderson, and the others who testified that newspapers were exhibited to them?

A. An identical bundle of each edition of the new campaign as it had been completed.

Q. You have heard the testimony of Tom Anderson?

A. Yes, sir.

Q. At the present trial?

A. Yes, sir.

Q. Do you recall his stating on the present trial that you came into his store and spoke to him and called him "Old Tom Anderson?"

A. I heard him say that on the stand.

Q. When was the first time you heard that?

A. On the stand the other day.

Q. Did he make any such statements at either of the former trials?

A. No, sir. The records will bear me out in that statement.

GENERAL McCLANAHAN: I object to that your Honor.

THE COURT: Repeat that, Mr. Combs.

(Last question and answer read by court reporter)

THE COURT: Objection overruled."

The general reading matter in each of the page advertisements in twenty issues was different, but no change was made in the advertisements devoted to the sponsors. $1,400. was the amount we received from a county or group of counties for the series of twenty page advertisements. I would estimate from sixty to eighty per cent as the fair average of the prospects on whom we called that made contributions, these ranging from $10.00 to $150.00. Those made by Gov-

ernment witnesses were a little smaller than the average, running as a rule from $10. to $20. Dr. Conyers contributed $25.00; Tom Anderson $100. but he is not listed in any count of the indictment. The average time devoted to a presentation of the plan was from three to ten minutes; sometime fifteen minutes, and in one or two instances it might have been an hour.

There was no special hurry to abruptly leave any prospect whether he contributed or not. Uniformly, there was the courtesy extended of shaking hands with them and asking them to come to see us. They would usually be busy and we would be busy and we left them when the transaction was closed.

I never wrote the word "advertising" on any check after it was signed. It was written on the check before it was signed either by myself or the person who wrote it. I uniformly gave a receipt, and while I represented the Huntsville Daily Register, this receipt was written on the regular printed bill head of that paper, the receipts being carried in a pad about half an inch thick."

"Q. In regard to form, were those receipts uniform or different?

A. Uniform.

Q. I pick up two at random, one given to Dr. Conyers and one to Mr. Cherry, that have been introduced in evidence here and ask you to take the one given Dr. Conyers and read it to the jury what is on that receipt?

A. Upper left-hand corner "William H. Pierce, President;" center North Alabama and South Tennessee's leading Newspaper." Right-hand corner "Frost, Landis & Kohn, National Representatives." The n "Huntsville, Ala. June 11, 1935. Dr. D. J. Conyers, Physician, surgeon and planter Lebanon (R No. 4 Halls) Tenn. 750 acres to 1000 sale, etc. To the Huntsville Daily Register, Dr. Daily, Sunday and weekly." Left hand corner 32 page Hoe Press, Ludlow, Monotype and Linotype equipment. Publication offices, Register Building, Right-hand lower corner. "Published in the heart of the Muscle Shoals Region. 1935, June 11. To 2-½ units,

J. E. Pierce

20 wks, pub and sub D&S 5 mos. $25.00" Marked "Pd J. E. Pierce, editor". Left-hand corner "Thanks."

Q. Was the words "thanks" written substantially on all of the receipts?

A. Each one of them.

Q. How are they signed?

A. "J. E. Pierce.

Q. What are these abbreviations here 20 "wks"?

A. Twenty weeks.

Q. "Sub."

A. Subscription.

Q. "D&S"?

A. Daily and Sunday.

Q. "Five months?"

A. Months.

Q. When was that receipts prepared, with respect to Dr. Conyers?

A. When was it written out?

Q. Yes.

A. In his presence at the closing of the transaction."

I had been informed in Alamo before I called on Dr. Conyers that he was a landowner, but as to the number of acres he owned, I got that information from Dr. Conyers himself. The information as to the number of acres owned by Mr. Cherry and his selling price was obtained from Mr. Cherry himself, and he authorized me to insert the advertisement. I published no advertisement unless authorized to do so, and the advertisement was prepared from the information furnished by the sponsor himself.

In soliciting funds from the Government witness and from others, I did not have any purpose to defraud them, but I was trying to render them a helpful service.

I never in my life introduced myself as "Henry Pierce" or "old Henry Pierce," but always as J. E. Pierce.

Roach and I, prior to going into Medina were accompanied in Gibson County by Robert Ross, in Tipton County by W. E. Penner; in Obion County by an ex-rural carrier, whose name I do not recall; in Haywood County by ex-sher-

iff Drake of that county.

I remember calling on Esquire Couch, who testified as a Government witness. We exhibited to him the same copies of the Huntsville Register that were exhibited to other prospects. I did not state to him that I was connected with the TVA. Roach, Ross and myself stood on the front porch of his house while I talked to him. He appeared to be a sick man.

In furtherance of my plan or program, I never stated to any one that I was connected with the TVA.

"Q Were inquiries ever made of you as to whether you had any connection with the Government or the TVA?

A. Yes, sir.

Q. When that was done what did you do?

A. I would, as promptly as I could, correct the impression that I was representing the Government or any department thereof in any capacity what ever. I would tell them that I was representing the Huntsville Daily Register, selling community advertising. Invariably, I would introduce my letter of identification.

Q. Mr. Pierce, state whether or not the sales talks you made in presenting your plan or in soliciting funds was in line with the material set out in the page advertisements, in substance or was it different?

A. It was in substance the same as the material covered in the page advertisement and the stories about the committees and so forth.

Q. Something has been said by some of the witnesses that you stated you had to make reports daily to Washington. Did you make any such statement as that?

A. No, sir.

Q. What, if anything, did you say about making reports or wiring money anywhere?

A. When that question would come up, I would state that we wired money to Huntsville, Alabama. The reason was this: we would be closing that territory or given county, and someone might want time and request us to wait until the next day, and I would state that it was necessary to close

that territory then because we had other territory to visit.

Q. There have been some comments about your cashing checks in some places, and in other places, garages. Did you cash checks promptly, or hold them?

A. We tried to clear our checks every day during banking hours and sometimes after banking hours it was good business to cash them in the neighborhood where the checks were given.

Q. Why was it necessary to cash the checks promptly?

A. Well, it is good business, as any prudent business man will exercise in clearing his checks for the day's business, and then, too, we were operating on a small margin and it was necessary to get funds to Huntsville to keep operating and meet expenses as they accrued in the various campaigns.

Q. Mr. Pierce, the statement has been made by some of the Government witnesses that you stated the Government would match any fund that they contributed. Did you make any statement of that kind?

A. No, sir.

Q. What was said, if anything, about anybody sharing any part of the expense indident to the page advertisements.

A. In the introduction of the campaign, the amount to be raised was $2,400.00 and I made it plain that we were taking care of $1,000.00 of the $2,400.00, leaving $1.400.00 to be raised by the gentlemen in the communities embraced in this campaign.

Q. Now, some of the witnesses have testified that "we" would match his subscription. Did you ever use that language, or that in substance?

A. "We"?

Q. Yes, sir.

A. Yes, sir, that "we" would take care of $1,000.00.

Q. But in using the term "we", did you intend to convey the impression that the Government would do that?

A. No, sir, I never had that in mind, and the prospect didn't have anything like that in mind, I don't think, unless it was a conclusion erroneously reached.

Q. Regardless of the conclusion of the prospect did you

intend to create the impression th t the Government was interested in your campaign?

A. No, sir, absolutely not.

Q. Mr. Pierce, were you conducti g your campaign in Gibson County or the canvass, and in Crockett County, out of which these prosecutions have arisen, as part of a general campaign or business which you conducted, or were you confining your activities to those particular counties?

A. No, sir, it was part of a general campaign in Mississippi, Alabama and Tennessee.

Q. Mr. Pierce, in givingf a receipt to the subscriber, did you fold that receipt or not, or do you recall?

A. I don't recall ever having folded a receipt. It was on a pad and when I wrote it and I handed it to the prospect with my right hand and held the pad with my left hand.

Q If you had folded—

GENERAL McCLANAHAN: Don't lead the witness.

THE COURT: I think that would be leading.

MR. GWINN: I would like to ask the question and then have your Honor rule on it.

THE COURT: Ask the question.

MR. GWINN: I was preparing to ask the question when General McClanahan interrupted.

Q. Mr. Pierce, if you had folded receipts, as testified to by some of the Government witnesses, what reason, if any, did you have for folding the receipts.

GENERAL McCLANAHAN: I object to that your Honor.

THE COURT: Sustained.

MR. GWINN: Note my exception.

After giving prospects receipts, I did not immediately leave the community, but stayed in the community till I got through.

I saw the Government witness Joe Luckey after I had been arrested.

"Q. What, if anything, took place between you and Mr. Luckey on that occasion?

A. Mr. Luckey was very angry and demanded the return of his $10.00 or he was going to turn me over to the

Government, and advanced on me in the crowd, and the presiding magistrate remonstrated with him that he was a magistrate himself and it was up to him to be a peace officer rather than antagonistic. I told him to turn me over—I hadn't violated any law.

Q. Did he attempt to make an assault on you?

GENERAL McCLANAHAN: He is still leading him your Honor.

THE COURT: That's sustained.

MR. GWINN: I am not going to argue with the Court.

THE COURT: You observes the rules of the Court, Mr. Gwinn and quit arguing back.

MR. GWINN: Note my exception.

THE COURT: Your conduct is reprehensible. You are being deliberately disrespectful to the Court and you want to desist from that.

Q. Mr. Pierce, is there anything further that you want to state to the Court and Jury in reference to your conduct in the advertising campaign in which you were engaged?

A. Nothing except to emphasize to this Honorable Court and to you gentlemen of the Jury, that I am innocent of the charges preferred against me. I was honestly sincere about the conduct of my business, the same as I had been for years, in the sale of this community advertising, the boosting of the natural and potential resources of each and every community visited and doing what we could to attract new people, money and industry as well as to promote cheap power, good roads and lower taxes.

Q. There are one or two questions I think I omitted. You heard the testimony of Mr. J. T. Mathis about asking you for government credentials. Did he make such a request of you?

A. No, sir, he did not. I voluntarily showed him my letter identifying myself, and read it to him.'

"I did not refuse to let the witness Shoaf see the letter of identification which I read to him, nor tell him that it was signed by the President of the United States. I discussed with Mr. Cherry the naming of his community as

"Cherryville"; with Mr. Shoaf the designation of his community as "Shoafville" and each wanted that done. It was written on Shoaf's receipt.

I never told any one that I had left my credentials at the hotel.

CROSS EXAMINATION.

The Huntsville Daily Register was organized in October 1931, its first issue being published December 8, 1931. The common stock was owned by Nannie E. Pierce my wife; William H. Pierce, my son, and myself; William H. Pierce being President. I was vice president and editor. The capital stock consisted of one hundred thousand shares, no par value, and $100,000 preferred stock, this having $1.00 par value. There were about 100 preferred stockholders. Each of them was given a certificate exchangeable for the regular stock on presentation. All who called for them, were issued the stock certificates, but some had not called for them when the paper ceased operation. I do not remember how much we sold the preferred stock for. The Pierce family owned all the common stock and some of the preferred stock. No others attended stockholders meetings. Purchasers of preferred stock paid par value therefor or more. There were ninety-eight persons other than members of the Pierce family under my direction. As Vice President and Editor I had charge of its operations. Stockholders' meetings were held at the office or at my home, and we had a small circulation. We had an average circulation in 1934 of 3,618 and by October, 1935 it was 4,244.

Q. What is the capital stock of that corporation?

A. One hundred thousand shares, no par value common stock, and a hundred thousand preferred stock.

Q. No one else owns any of the common stock except the Pierce family?

A. No, sir.

Q. How many preferred stockholders are there?

A. Approximately 100.

Q. The preferred stock has no par value?

A. One dollar par value.

Q. Approximately 100 stockholders?

A. Yes, sir.

Q. Which of those 100 received their stock?

A. All who called for it. Each was given a certificate exchangeable for regular stock on presentation.

Q. And all of them haven't called for it? Some of them haven't been issued their stock?

A. They had not at the time the paper ceased operations.

Q. How much did you sell the preferred shares for?

A. I don't recall.

Q. You don't remember—

A. I don't remember the total amount; $100.00 and up.

Q. How much did the common stockholders pay for theirs?

A. There was no par value.

Q. Who had control of the newspaper?

A. The common stockholders.

Q. The preferred stockholders never attended any of the meetings?

A. Yes, sir, some of the preferred stockholders were also common stockholders.

Q. Who were they?

A. Members of the Pierce family.

Q. No one else outside of the Pierce family ever attended any of the meetings of the stockholders?

A. No, sir.

Q. And the Pierce family owned some of the preferred stock?

A. Yes, sir.

Q. Now you say the preferred stockholders paid $100.00 per share?

A. Subscribed $100.00 or more; it was $1.00 par value.

Q. How many, outside of the Pierce family, bought preferred shares?

A. Approximately 98; either 96 or 98.

Q. They had no control over running the newspaper?

A. No, sir, they bought preferred stock as an invest-

ment only.

Q. The paper was run entirely by the Pierce family?

A. Yes, sir. Under my direction.

Q. Under your direction?

A. As General Manager, yes, sir.

Q. Wasn't it under the direction of the President, your son?

A. I was Vice-President and Editor and I had charge of the operation of the paper.

Q. You were in full charge of the paper then; is that right?

A. Except as to the duties assigned to the other parties.

Q. Where did you all hold your stockholders' meetings?

A. In the office or at home.

Q. Home?

A. In Huntsville, Alabama.

Q. How much circulation did you have?

A. Small circulation.

Q. What was your circulation in 1935, and 1934?

A. I think the average was, up to that time 3,618.

Q. 3,618, that was in 1934?

A. 1934 and 1935; up to April of 1935 I believe.

Q. How much did you have in your next report?

A. As I recall it, there was 4,244.

Q. When was that?

A. I think that was in October, following the annual statement in April.

Q. Subsequent to the April report?

A. Yes, after.

Q. What was your circulation composed of?

A. Both carrier-delivered and mail subscription.

Q. Where were those papers delivered by carrier?

A. Huntsville, Alabama.

Q. How were they delivered, in automobiles, or passed around on the streets?

A. By boys walking, and the use of bicycles.

Q. Some of them were delivered in automobiles, weren't they?

A. No, they only went to regular subscribers and we had some agents in the mill district that would have their own carriers; we would sell them the papers.

Q. You had quite a number of subscribers in Huntsville?

A. The number I have stated.

Q. How many subscribers did you have in Huntsville, Alabama, or in the county in which Huntsville is located?

A. I don't know.

Q. About how many?

A. I don't know.

Q. You were the general manager and had charge of the newspaper; don't you know that?

A. No, sir.

Q. You won't say?

A. No, sir, because I don't know.

Q. Will you say approximately how many?

A. No, sir.

Q. Where else did you send the newspapers? Where else did your subscribers live?

A. They lived in different parts of Alabama, Tennessee, and other states.

Q. What other states?

A. Well, we had some in Tennessee and some in California.

Q. Yes, sir; and where else?

A. Some in New York.

Q. Where else?

A. Some in Chicago.

Q. Where else?

A. I don't recall the others.

Q. I believe you testified on the former trial that you sent papers to practically every state in the Union?

A. We sent papers to practically all the states in the Union. I make that statement now.

Q. Did you have subscribers in practically every state in the Union?

A. We didn't have paid subscribers in every state, but

we would have subscribers in States where people had moved from Huntsville into California, Arkansas and Tennessee, here in Memphis.

Q. How many subscribers did you have in Alabama?

A. I don't know.

Q. About how many?

A. I have no idea.

Q. How many did you have in Mississippi?

A. I don't know.

Q. About how many?

A. I don't know.

Q. How many did you have in Tennessee?

A. I don't know.

Q. About how many?

A. I don't know.

Q. How many in California?

A. I don't know.

Q. How many in California, or New York?

A. I don't know.

Q. Well, about how many?

A. I have no idea.

Q. Do you know how many you had in any state or city?

A. No, sir.

Q. Why Mr. Pierce, you were Editor and Vice-President of the paper, weren't you?

A. Yes, sir, and I could have been general manager of the Commercial Appeal but I couldn't answer you that question.

Q. You had access to the facts and figures in connection with the paper, didn't you?

A. I had charge of the paper.

Q. You have testified to other things about that newspaper?

A. Yes, sir.

Q. Those questions were asked you at the last trial, were they not?

A. Substantially so.

Q. And that has been two or three months ago, has it not?

A. It was in February.

Q. Whereabouts in Tennessee did you have subscribers?

A. We had subscribers in Memphis, Fayetteville—

Q. Where else?

A. Chattanooga.

Q. Where else?

A. Knoxville.

Q. Where else?

A. One of those in Knoxville was the Tennessee Valley Authority.

Q. The Tennessee Valley Authority subscribed?

A. Yes, sir, I was there when the check came in.

Q. When did they enter their subscription?

A. I don't know.

Q. Do you have any other subscribers that you remember their checks coming in?

A. No, I don't recall the other checks.

Q. That is the only one you can remember just now?

A. At Knoxville.

Q. Do you remember any other specific subscribers anywhere else?

A. Not right now.

Q. I believe you stated that you called on, prior to entering Gibson County, and sold 15,000, didn't you?

A. In all of the states, up to now.

Q. I mean up until the time you entered Gibson County.

A. I sold approximately 5,000 up until that time.

Q. And every time you sold one of them, they became a subscriber?

A. No, sir.

Q. Your receipt was a subscription, wasn't it?

A. They got that as a free paper at the time the publication was run. They didn't pay for the paper.

Q. Mr. J. B. Cherry, planter, June 11, 1935, two units.

A. Twenty weeks.

Q. Twenty weeks, sub, D & S. What does D & S mean?

A. Daily and Sunday.

Q. Well, he was a subscriber?

A. Not in the sense of being a paid subscriber.

Q. He received the newspapers, didn't he?

A. Yes, but he wouldn't be a paid subscriber.

Q. You mean a man paid you twenty dollars and he wouldn't be a subscriber?

A. Not in the sense that the Post Office Department requires.

Q. Mr. Pierce, the abbreviation "sub" means subscription?

A. Yes, sir.

Q. And "five mos." means five months?

A. Yes, sir.

A. Yes, sir.

Q. Wasn't that a subscription?

A. No, sir.

Q. He was sent a paper?

A. He was sent a paper with our compliments in connection with the work we were doing.

Q. That was just complimentary?

A. Yes, sir, the paper was, and also the advertising we did for him was complimentary.

Q. Mr. Anderson paid you $100.00 and he was just sent a paper with your compliments?

A. His $100.00 was in order to advertise the County.

Q. I will ask you to take Tipton County; take Tipton County Advertisement there; it is on Easter Morning, and explain to the Jury were you advertised any potential or natural resources of Tipton County? Just show us.

A. Shall I read it, General?

Q. Just show us where you advertise the natural and potential resources of Tipton County.

A. It starts off, "Three more progressive West Tennessee Counties, Tipton, Lauderdale and Haywood have joined in the active stride to do all they can to help ascertain cheap

Muscle Shoals power, lower taxes and better roads throughout that sector. Potentially this region is great, and the natural resources are wonderful." Then the story continues; if you want me to read it I will. It is two or three columns.

Q. Do you tell what the natural resources are?

A. The natural resources would have to do with—will you permit me to read the first page?

Q. All right.

A. (Reading) "Tipton, Lauderdale and Haywood bid you welcome on this Easter."

Q. Is that advertising the natural and potential resources?

A. General, you have to take the twenty pages as a whole to the entire campaign idea over.

Q. All right, sir.

A. Shall I read this page?

Q. If you want to.

A. I am your witness and at your service.

Q. I am asking you the question.

A. I will state that the entire twenty pages, taken as a whole and all of the write-ups, represented the activity that we were putting forth on behalf of the natural and potential resources of that county or any other county.

Q. You won't point out any one thing in any one issue where you advertise the natural and potential resources of the county?

A. If you will give me an opportunity, I will.

Q. All right, I'll give you that opportunity.

A. We will take up the balance of the week reading.

Q. Is it necessary to read the whole thing?

A. Yes, sir, to get the full benefit of the idea you would have to take the whole twenty pages, General.

Q. "West Tennessee Catches Step." Each one of those articles is supposed to have something pointing out the natural and potential resources of the county?

A. I will answer that by submitting the entire twenty pages and the write-ups.

Q. And not one of these newspapers points out the nat-

ural and potential resources of Tipton County?

A. Taken as a whole they will.

Q. Can you point out any single one issue that advertises the natural and potential resources of that county?

A. General, do you understand what natural and potential resources are?

Q. I want you to explain it to the jury.

THE COURT: He says, General, that he will have to read all of the articles. Do you want him to read all of them?

GENERAL McCLANNAHAN: No, sir, I just asked him the question.

THE COURT: That was his answer, General.

GENERAL McCLANNAHAN: It wasn't responsive to my question.

THE COURT: I think it was, General. You asked him to specify any particular one, and he said he could read the whole twenty, and I think thatanswers your question.

A. (The witness) I may clarify that by saying that we can't take the first chapter of Genesis and tell what is revealed in the last chapter of Revelations.

Q. You are taking the first chapter of Genesis and the last chapter of Revelations as illustrative of your advertisement of the natural and potential resources of Tipton County?

A. What I mean is that the first line we wrote can't explain the substance of the entire campaign.

Q. (Reading) "West Tennessee Catches Step." Three more counties join parade to get more power. Tipton, Lauderdale and Haywood catch stride." What do you mean by "catch stride?"

A. Just what it says.

Q. Catch stride with what?

A. If you were a newspaperman, General—

Q. I'm not.

A. Couple it with the first introductory banner line and with the first paragraph.

Q. "Prominent man dies." That's your headline.

A. It had nothing to do with the subject before the jury.

Q. "West Tennessee Catches Step."

A. Yes, that does.

Q. "Their resources most wonderful."

A. Yes.

Q. "Together with North Alabama, North Mississippi, they stand for progress. Three more progressive West Tennessee counties, Tipton, Lauderdale and Haywood have joined in the active stride to do all they can to help establish cheap Muscle Shoals power." What have they done to help establish cheap Muscle Shoals power by their advertisements.

A. Go ahead and read the story. It is recited in two or three columns over there.

Q. "Lower taxes and better roads." How could that help lower taxes in Tipton or Haywood County by advertising in the Huntsville Daily Register?

A. That is the first of a series of twenty pages.

Q. How could that lower taxes, that advertisement in the Huntsville Daily Register?

A. Do you want me to answer that?

Q. I wouldn't have asked you if I hadn't.

A. By the organization of local public sentiment and—

Q. What public sentiment was there in Tipton County to organize?

A. I think the aftermath shows what happened.

Q. What has happened?

A. They have an entirely different neighborhood. I think.

Q. You think they have an entirely different neighborhood now?

A. I know they have. Their roads are in better condition and they have electricity that they didn't have. There has been general activity to improve the status in their community.

Q. Tell me one road that has been improved?

A. I noticed the roads as I drove over.

Q. They were all gravel when you were there weren't they?

A. I don't recall; I found a lot of them in deplorable condition.

Q. In Tipton County?

A. Yes, and I think you will agree with me, on the west side.

Q. Whereabouts?

A. Starting in at Mason, a lot of the roads were dusty.

Q. Tell me one road that has been improved in Tipton County? You have been over them.

A. The general appearance of the roads look better. I don't say that is the result of this campaign, but it was certainly brought about by something.

Q. How many people did that paper go to in Tipton County?

A. I don't know.

Q. About how many?

A. I don't know.

Q. Can you give an estimate?

A. No, sir.

Q. Would you say ten or twenty or thirty?

A. My answer stands, I don't know.

Q. Have taxes been lowered in Tipton County since you were up there?

A. That comes through equalization, you know General.

Q. The County Court makes the assessments?

A. I know that but—

Q. Do you know—

MR. GWINN: If your Honor please, I think the witness should be allowed to finish his answer.

THE COURT: Yes, sir.

A. (The witness)--public ills are cured by aroused public sentiment.

Q. What public sentiment was aroused in Tipton County by your appearance there?

A. I don't know.

Q. Do you know whether taxes have been raised or low-

ered since you were there?

A. I do not.

Q. Do you know whether taxes have been lowered or raised since you have been in Haywood County?

A. I haven't been through the tax books to ascertain.

Q. Well, that's what you wanted to do—help the farmer?

A. Well, when a Revivalist comes to town and holds a meeting he doesn't stay in town to see the result of his work. Like a newspaper advertisement, he plants the good seed and then is gone.

Q. How were you planting good seed in Tipton County?

A. Through this campaign.

Q. How do you know any seed was planted?

A. I know they were planted when I called on them preaching the Gospel of better roads and cheaper power.

Q. Did you find any men in any of the counties in Tennessee who were against those things?

A. Yes, sir, several.

Q. Who did you find?

A. Small country merchants who raised the devil about good roads which would take business away from some of them.

Q. How about cheaper power, TVA?

A. I found several against cheaper power that owned stock in the power companies.

Q. How about lower taxes? Did you find anybody against that?

A. I think that is generally approved, except some say you have to have more taxes to carry on a public movement.

Q. You don't know any of those by name?

A. No, sir, not by name.

Q. You took this bundle of papers and I believe you said this is about half the size (Indicating bundle of newspapers)?

A. Yes, sir.

Q. That's what you called the "dummy?"

A. Yes, sir, you work with that.

Q. Your headline was that page?

A. Yes, sir.

Q. "TVA Chief Tells of Dire Need."

A. I explained that this morning.

Q. Those are the headlines of the dummy that you exhibited to the people of Gibson and Crockett Counties?

A. All of the West Tennessee Counties, because it was the first issue that came out in Tennessee—they are something like them. Are these the series of papers?

Q. Maybe these are not the ones used in that dummy but they are something like them. Are these the series of papers?

A. (Examines papers). They are copies of the Huntsville Daily Register carrying advertisements of West Tennessee and all of the counties in Mississippi.

Q. I hand you some more papers and ask you if they are—

A. Yes, sir, they are Huntsville Daily Register carrying Alabama.

Q. Were they in this dummy?

A. Yes, sir. Seventeen counties in Alabama, 46 in Mississippi, and West Tennessee counties in there at the time the solicitation of Gibson County was made.

GENERAL McCLANNAHAN: I want to make these exhibits.

(Exhibits 31-3 and 32-3 received in evidence).

Q. And they were in this bundle here. Some of them have been lost. They were pasted so they would turn better?

A. Some of them are gone.

Q. These will take the place of them?

A. Perfectly satisfactory with me.

Q. They are the same ones?

A. Copies of the same publicity.

Q. There has been no harm done by the loss of these papers?

A. No, sir, I would be glad to have the whole file.

Q. We will substitute these in place of them.

MR. GWINN: I didn't catch that.

GENERAL McCLANAHAN: I said we will substi-

tute these.

A. I don't know whether they are copies of the ones you lost or not.

Q. You know more about it than anybody else.

A. I will identify these as being true copies, as far as they go.

Q. These are copies of the ones you had; that's all I am asking.

A. Yes, sir.

Q. And also this one?

A. Yes, that's copy of the Huntsville Daily Register.

Q. Were they copies of the ones in the dummy?

A. Yes, sir, I had a copy of every one, Alabama, Mississippi and West Tennessee. Let me see that?

Q. Yes, sir. (Hands witness newspaper). Will you substitute these in place of the ones lost?

A. As far as they go.

Q. I mean as far as they go.

A. Yes, sir. I notice in the Alabama papers a man like Senator Bankhead. That's the type of man supporting the movement in that state.

Q. This is Lauderdale County, Mississippi; Tishomingo County, Union, Pontotoc and Benton Counties; Marshall, Lafayette, DeSoto, Tunica and Tate and Washington Counties?

A. That's Mississippi there.

Q. They were in the dummy?

A. Yes, sir, this is the Alabama page here.

Q. But that was in the dummy?

A. Yes, sir, all of the Alabama, Mississippi and West Tennessee Counties were in there.

Q. Now the circulation of this paper was small?

A. Yes, sir.

Q. And where was this paper sent to?

A. General distribution.

Q. Where?

A. Both to paid subscribers and to sponsors of this campaign.

Q. I believe you testified before Were these questions

asked you and did you make these answers? "Questions: Mr. Pierce, was the circulation of the Huntsville Daily Register restricted to the immediate Huntsville territory?

MR. GWINN: What are you reading from?

MR. McCLANNAHAN: From page 449 of the last trial.

"Answer: No, sir.

"Question: Or were copies sent elsewhere?

"Answer: Practically every state in the Union.

"Question: What was the fact with reference to the contributors? Did you send the paper to them?

"Answer: Yes, sir.

"Question: For how long.

"Answer: Five months, twenty weeks."

A. Yes, sir. I instructed that one be sent to you, General.

Q. That was after the trial.

A. Yes, sir.

Q. I think I received it, Mr. Pierce. I wasn't a contributor, though.

A. No, sir, I didn't solicit you.

Q. You don't know how many you sent to Tennessee?

A. No, sir.

Q. Or Alabama?

A. No, sir.

Q. Or Mississippi, or California, or New York?

A. I have no personal knowledge of that, no sir.

Q. Can you guess as to the approximate number that you sent to any state in the Union?

A. No, sir, this is not a guessing matter. It is serious with me, General.

Q. I am just asking you to approximate it. I am not asking you to be positive.

A. I told you I had no personal knowledge of it.

Q. You were the manager of it, weren't you?

A. That's true, I was.

Q. You sent this paper to the Governors of every State?

A. Yes, sir.

Q. And to Senators?

A. Instructions were given to send them to Senators, Congressmen and Governors of the States.

Q. All right, sir.

A. And Chambers of Commerce.

Q. A copy of every edition was sent to each of those?

A. I have no personal knowledge that it was sent. I know that I instructed that it be sent.

Q. But you don't know whether they were sent or not, of your own personal knowledge.

A. No, sir.

Q. Now what benefit could have accrued to any of these counties, from that advertisement. Take Gibson County, for instance.

A. My purpose, General, not only in Gibson, but in all of the counties visited, was to arouse public sentiment.

Q. How could you improve the natural and potential resources of Tipton, Gibson or Crockett Counties or how could you lower the taxes in or get better roads for any of those counties by advertising in a newspaper sent all over the United States?

A. By arousing the civic pride of each and every community visited and arousing public enthusiasm and sentiment; somewhat analogous to a "City Beautiful" campaign to improve the looks of your house and lot. When things like this are done, it encourages the other neighborhood to do the same thing.

Q. Your newspaper encouraged that in every community visited?

A. The newspapers and myself elected to conduct that campaign and we do so with no small degree of success.

Q. Outside of your asking for subscriptions or of selling this newspaper, what did you do in any community you visited?

A. I was selling the idea of community betterment through community publicity advertising.

Q. Outside of that, how did you create or stimulate any interest in the community?

A. By enthusing the people on the subject I have discussed, cheaper power, lower taxes and better roads, beautiful churches and schools.

Q. And you did that in three to ten minutes?

A. My solicitations consumed from three to ten minutes on the average and sometimes an hour or more.

Q. How many of those solicitations consumed an hour or more?

A. I think the one with Senator Garner was perhaps the longest in Gibson County. He and myself and Mr. Roach were present at the time and I took probably an hour or more discussing the situation in that territory.

Q. Who all did you sell to, Mr. Pierce?

A. The names of those listed on the different pages.

Q. Were they all farmers or not?

A. No, sir, they were bankers, merchants, ginners, farmers and others.

Q. Lawyers and doctors?

A. In some cases lawyers and doctors. Senator Harris of Greenfield made a speech before the City Council and got $100.00 for us to advertise Weakley County.

Q. That's the only town you went into in West Tennessee?

A. No, sir, I covered practically every community from Weakley County on.

Q. What lawyers outside of Senator Harris did you sell to?

A. I don't recall all of them. I even solicited Lester Fant, Assistant United States Attorney at Holly Springs, Miss.

Q. How many lawyers altogether did you solicit?

A. I don't know.

Q. About how many?

A. I don't know; the list on the different pages is there.

Q. How many doctors?

A. I don't know.

Q. How many different towns did you visit?

A. Practically every town in West Tennessee.

Q. How many towns did you sell?

A. You mean the municipalities?

Q. Yes, sir.

A. I don't recall.

Q. Most of your solicitations were confined to the rural communities?

A. No, sir, every town visited. There was one town near Greenfield that contributed $75.00. I can get that paper there and show you the page of Weakley County.

A. Get out that page of Weakley County and I will show it to you.

Q. Suppose you do that.

Q. All right sir, here it is. (*Hands witness newspaper*). How many lawyers are there in that list?

A. I don't know.

Q. All right, sir. Now here is the paper showing the contributors in Tipton and Haywood. Do you see any doctor there outside of Dr. Conyers?

A. I recall Dr. Witherington. He is in Tipton County, isn't he?

Q. Yes, sir.

A. He also gave me the name of his son?

Q. But he didn't subscribe?

A. That is part of the program.

Q. But he didn't subscribe?

A. Dr. Jack didn't, but his father did.

Q. Did you go to see anybody in Covington?

A. Yes, sir, Mr. Bringle, a ginner there.

Q. Who else in Covington?

A. I don't recall just now anyone else. Of course the campaign was finished when we got the amount of money to finish it; and then we opened up a new territory.

Q. Yes, sir.

A. Here is Tom Anderson, William A. Penner—

Q. William A. Penner?

A. That was complimentary from us.

Q. He wasn't a contributor?

A. No, sir, but he contributed his time.

Q. Didn't you say on direct examination, Mr. Pierce, that only those who contributed had their names in there?

A. He contributed his time.

Q. Did you put Reau Graves' name in there?

A. No, sir.

Q. He contributed his time, didn't he?

A. He was with us practically two days.

Q. His name wasn't in there.

A. No, sir, we didn't put all of the County Agents in. Some of them were with us a considerable length of time, maybe a week or two, and we felt they were entitled to additional compensation for their services and we would compliment them."

I changed the form of receipt after leaving Gibson and Crockett County, but the statements I made were the same I received verbal permission to quote the prospect as being in favor of the things stated, but did not have them sign in Gibson and Crockett Counties. I do not recall folding any receipts. I would tear them from a pad which I held in my left hand, and I imagine it would be inconvenient to fold the receipt while thus holding the pad. I was not in such a hurry as to prevent my folding them. They could have been open or folded, but there was nothing to keep them from seeing what was written on the receipts.

"Q. Mr. Pierce, was this question asked you the former trial, and did you make this answer: 'Question: You have heard something in the testimony about the receipt being folded in this way (Indicating). Do you recall whether the receipts were handed to the subscriber openly, or whether you folded them or not. Answer: As I recall it, in the majority of cases, they were just handed to them openly. Some of them may have been folded that way."

A. Yes, sir, I made that statement and I make it now.

Q. That was on direct examination. Now, in 1935 you didn't even publish that paper in Huntsville?

A. It was set up in Huntsville and printed in Decatur.

Q. By another newspaper?

A. Yes, sir, by contract.

Q. And you paid them so much to do that?

A. Twenty or thirty dollars a day.

Q. How far is Decatur from Huntsville?

A. Twenty-five miles by rail and 35 by car; 35 or 40 minutes ride.

Q. I notice you have a certificate from the Good Roads Association. Is that restricted, or can anybody get one of those certificates if they pay the fee?

A. You mean can anyone become a member?

Q. Yes, anybody that pays the price can become a member?

A. Certainly, the same as you can get in a Civic Club.

Q. When was that issued?

A. I believe it was 1935.

Q. The Best Idea Service of the Advertising Checking Bureau, Chicago, Illinois. How do those people make their living?

A. I don't know how they make their living. It is an organization of advertising experts. I don't know how their income is derived.

Q. You are a newspaper man, aren't you?

A. Yes, sir.

Q. You don't know about these checking bureaus?

A. I don't associate that Bureau with the crowd that sends clippings out. We have a number of clipping bureaus.

Q. You never heard of this one before you received this letter?

A. No, sir.

Q. That's the first time you ever heard of them?

A. We didn't know anything about that until that came into our office.

Q. It was sent you free of charge?

A. Yes, sir. They check over a thousand papers a month.

Q. Is that all they do, check things like that? How do they make expenses?

A. I have no personal knowledge of that.

Q. You have no idea how they make expenses?

A. No, sir.

Q. They just run a checking bureau.

A. I don't know anything about it.

Q. Now, you say in every county where they would put up $1,400.00, "we would put up $1,000.00?"

A. We would take care of $1,000.00 of the $2,400.

Q. Go ahead and explain to the jury why that was necessary; when you were selling advertising?

A. We were selling them the idea of community advertising.

Q. And your purpose was to make money?

A. And to serve the community.

Q. But you were not in business for your health.

A. No, sir, and I don't know of anybody in business for his health.

Q. I'm not, are you?

A. No, sir.

Q. Why were you all contributing $1,000.00?

A. Because we had worked out a plan by which this campaign could be carried on for a regular group of contributors, and the volume would run into several hundred papers, and where a group could raise the required amount, we were able to meet our pay roll and expenses and make a living.

Q. You really didn't contribute anything?

A. We did, of our rate.

Q. You just cut your price?

A. We made the statement, "This campaign is $2,400.00 and we will take care of $1,000.00, leaving $1,400.00 at $10.00 per unit."

Q. In other words, you were just reducing the price?

A. We regarded it as a matter of business.

Q. How much profit were you all making out of it?

A. Anywhere from three to four hundred dollars profit on the campaign if the expenses didn't eat it up; in ten days to two weeks three to four to five hundred dollars.

Q. What were you giving the communities?

A. Publicity.

Q. Where?

A. In the general distribution of that newspaper.

Q. You were giving Mr. Cherry publicity in Alabama and he was running for sheriff in Tennessee. What advantage did he get out of that sort of publicity?

A. He was having his community called to the attention of the American people. As Senator Capper says, it is doing a fine service to bring the resources of the communities before the American people.

Q. But how was that advertising going to help Mr. Cherry in his race for sheriff?

A. That advertisement might not have been worth a penny to Mr. Cherry personally, but he contributed to advertising the natural and potential resources of his county.

Q. What are the natural resources of Crockett County?

A. Agriculture and live stock.

Q. What else?

A. Principally that. There may be some timber out there, but I didn't observe much. There may be mineral but I didn't ascertain.

Q Well, that was your business, wasn't it? Before you could advertise the natural and potential resources you had to inquire?

A. It isn't my business to go into the bowels of Mother Earth to see if there is oil.

Q. But it was your business to advertise what you told those people you were advertising?

A. Yes, sir, and we did.

Q. You say you didn't make any inquiry as to the natural resources of Crockett County?

A. We have geological statistics in Montgomery, Alabama, from which that can be easily ascertained.

Q. Did you ascertain that from the library in Montgomery?

A. Not in all instances, because in some cases the people on the ground would tell what they wanted to advertise most. If they were interested in raising strawberries we would write that up.

Q. You didn't go to your library for this information?

A. Sometimes you would, for general information; whether there was a possibility of oil, gas, ore or silver.

Q. You say you were advertising the natural and potential resources of the different counties?

A. Yes, sir.

Q. To do that you would have to advertise all of them, wouldn't you?

A. No, sir; it would be impossible to advertise all of the potential and natural resources of Shelby County.

Q. Why?

A. Because developments take place all the time.

Q. What Chambers of Commerce did you send these papers to?

A. I don't recall.

Q. Do you know of your own knowledge whether these papers were sent to practically every state in the Union?

A. Not of my personal knowledge but I had every confidence and faith in the men I instructed to send them.

Q. How many men did you have working for you?

A. I don't recall.

Q. About how many?

A. You mean in the circulation department?

Q. In all your departments?

A. Counting the boys and girls 10 or 15.

Q. You were sort of general manager?

A. Yes, sir; at one time I had 104 on my pay roll in a newspaper office and operated seven machines. I operated three in this office, this is type-setting machinery.

Q. Now the letter of introduction that you used, that was signed by your son?

A. Yes, sir, he was President of the corporation.

Q. And you say in cashing these checks it was necessary to cash them every day?

A. Yes, sir, as any prudent business man would do.

Q. I believe you testified at the last trial that one reason why you sometimes cashed them was because of what hap-

pened at Medina when the checks were turned down?

A. Sometimes that happened.

Q. Was that one of the reasons why you cashed them?

A. In that community, yes, sir.

Q. In several instances you were asked whether you were a government agent or not?

A. Yes, sir.

Q. What made the people ask you that question?

A. I don't know.

Q. Did you say anything that would lead them to ask such a question?

A. Not intentionally.

Q. I notice you have one newspaper with Franklin D. Roosevelt and Anna Roosevelt Dall signed on it?

A. Yes, sir.

Q. Where was that signed?

A. When they visited the Muscle Shoals District.

Q. You took one of your newspapers over there?

A. Several of them.

Q. And asked them to sign it?

A. Yes, sir, and that is the only one in Alabama that Mr. Roosevelt had signed.

Q. The only one?

A. That I heard of.

Q. I imagine you have made close inquiries as to whether he signed any other paper?

A. I am pretty sure he signed no other.

Q. Was that the only autograph he gave while in Alabama?

A. On a newspaper.

Q. I mean any other autograph?

A. I don't know.

Q. Did he autograph some baseball that some girl brought up?

A. I don't know.

Q. But you do know that is the only newspaper he autographed?

A. A representative of my organization was on the train with the President and accompanied him.

Q. That was the only newspaper presented to him then?

A. Perhaps so.

Q. If you knew him so well, why was it necessary to get his autograph?

A. We thought it was quite an honor to have the incoming President of the United States autograph our paper.

Q. But you knew him so well. You knew him as Franklin, didn't you?

A. No, sir.

Q. You knew him very well?

A. I knew him when he was Assistant Secretary of the Navy. All that business about my saying I had gone to school and had been raised up with him, you appreciate as I do that that wasn't the truth.

Q. I don't appreciate anything, Mr. Pierce. I am simply asking you. You say that's not the truth, what any of the witnesses said about your saying that you had been raised up with him and had been a classmate of his?

A. I never said I was raised up with Roosevelt, or went to school with him.

Q. And I believe you stated at the former trial that the witnesses who testified that you left hurriedly after each sale, were fabricating?

A. What was that?

MR. GWINN: Read that, please.

(Question read by the reporter).

MR. GWINN: I object to it.

GENERAL McCLANAHAN: I will withdraw the question.

Q. Was this question asked you at the last trial, and did you make this answer:

"Question: I believe you told Judge Webster this morning that what the witness said on the witness stand about you and Mr. Roach leaving hurriedly after each sale, was a fabrication?

"Answer: Any statement made that was contrary to the facts was a fabrication, but the majority of those witnesses were trying to be honest and were simply mistaken in their conclusions as to what I said at the time I was making my sales talks."

A. I made that statement and I make it now.

MR. McCLANAHAN: That is all, your Honor.

MR. GWINN: Have you those Tipton County papers?

MR. McCLANAHAN: Here is one, Mr. Gwinn.

REDIRECT EXAMINATION: By Mr. Gwinn:

Twenty issues of the paper, containing page advertisements, were actually printed and sent to all counties participating in the program. The paper you now show me is dated June 27, 1935, carrying advertisements for Tipton, Lauderdale and Haywood Counties, and shows that it was directed to Joe Luckey. It shows the general distribution of the papers.

Thereupon, the Defendant read from said issue of the paper the list of sponsers, residing in Tipton County, as therein set forth.

In addition to Greenfield, Tennessee, I find on making a hurried but incomplete examination, that I presented my plan publicly to City Councils or Chambers of Commerce at Leland, Drew, Ruleville, Sumner, Rolling Ford, Bennett, Sturgis, Tutwiler, Johnson, etc., on the Mississippi side; Kingland on the Arkansas side, and so on down the line. Lawyers, doctors, judges, sheriffs, bankers, merchants, farmers, representative people of all classes were called upon and appear on the lists. We called upon and obtained contributions from the Chancellor of the University of the South at Sewanee, and the President of Athens College, Athens, Alabama.

The paid circulation of the Huntsville Daily Register was small, 3,618 and 4,244 the last two Government reports. Papers were sent to Governors, Congressmen, Chambers of Commerce and to contributors to our advertising campaign which were not included in our list of paid subscribers. Send-

ing the papers to these was incidental to the service we were rendering. The Government requires that newspapers keep separate records of paid subscriptions and persons receiving the paper free. I stated to the prospects that we were sending out large numbers of the papers to different parts of the country. Of course, they did not all go out the same day. If we included all copies sent out during the campaign, it would run into hundreds of thousands.

Q. Will you read the paragraphs in this paper different from the one General McClannahan read about Tipton, Lauderdale and Haywood Counties?

A. (Reading): "Three of Tennessee's Foremost Counties, West Tennessee would resent any intimation that it doesn't strive 24 hours every day to better its economic, political, social and religious status, and particularly those in Tipton, Lauderdale and Haywood Counties, are in sympathy with Roosevelt policies. His interest and influence is felt in every corner of this region, especially since it is in such close proximity to Muscle Shoals." Do you want me to read further?

Q. Yes, sir.

A. (Reading): "Each of these counties is made up of numerous communities, the future of them being full of hope and promise. Good roads provide excellent means of travel, but at no time have the ambitiously good folk here believed in mediocrity. They want the best that is possible in the way of highway and lateral road improvement. The taxes in Tipton, Lauderdale and Haywood are higher than a great many of Tennessee's 95 counties enjoy and without mincing words, people of each of these counties go on record as favoring and demanding a substantial reduction. Efforts are put forth in an unified manner to accomplish the goal of lower taxes. The well-known public enemies have resisted the attempt generally to bring about cheaper power from Muscle Shoals, but sooner or later these stumbling blocks will be removed from the way. Our friend Senator Kenneth McKellar, is with us on our determination that this benefaction, as well as cheaper fertilizer, shall be had, and of one mind our citizenry looks forward to the advent of both.

J. E. Pierce

Agriculture and the raising of live stock are chief among the enterprises of Tipton, Lauderdale and Haywood counties. Real progress has been made in the development of each of these pursuits. The pioneer persistency obtains among the people of Tipton, Lauderdale and Haywood in their undertakings—men and women who believe in growth and development. They boast of good schools and churches and not bow to anyone for the vision, faith and actions which they have. The resources here are yet to be developed. Potentially and naturally Tipton, Lauderdale and Haywood are rich by reason of their abundance. As a matter of information, the next decade will find an enthusiastic capitalization on every hand of those assets which are both many and great. We extend a hearty welcome to individuals, firms and corporations to visit the progressive counties of Tipton, Lauderdale and Haywood, each of which has inducements galore to offer any seeking location in this choice section of the favored Southland. You'll be impressed by our hospitality, by our aggressiveness, by our vision, by our faith, by our ambition and by our action. Growth and development are destined to take place in a larger way from now on. Don't fail to read the account of the past, present and future of Tipton, Lauderdale and Haywood which will appear in the next of this series of publicity pages."

Q. Is there anything further there?

A. Yes, sir, it says: "We favor (1) Cheaper power, (2) Lower taxes, (3) Better Roads." That is the message from Lauderdale, Tipton and Haywood, starting with Tom Anderson.

Q. Now, Mr. Pierce, will you take that paper and read the names of the sponsors, beginning with the County Seat for Tipton County."

Q. Mr. McClannahan asked you in regard to the headline "TVA Chief Tells of Dire Need."

A. Yes, sir.

Q. Will you take that list of papers and read the other headlines, or some of them at least, that are printed in type equally large and equally bold?

J. E. Pierce

A. Issue of March 31, 1935, carries the first work in Tennessee. Our first banner line on that page is "TVA Chief Tells of Dire Need," with a news story sent out from Washington, D. C. The next paper is February 10, 1935, with the banner line, "Gold Ruling Expected Soon." January 6, 1935, the main banner line, "Voters Uphold City Administration," having to do with a local news item in Huntsville. The managing editor would pick out the most important news item and feature that, as was the case on October 21, 1934, when he emphasized "Stoll Prosecution Was Discussed," another news item from Washington, D. C.

Q. Why was that particular headline used, that Mr. McClannahan pointed out, about the TVA Chief?

A. Because that was the first issue we published for West Tennessee counties carrying the counties of McNairy, Chester and Fayette, and in order to display this page as the beginning of West Tennessee, we had to accept that as being the beginning of the West Tennessee publicity campaign.

Q. I hand you another copy of the Huntsville paper. What is the date of that?

A. June 16, 1935.

Q. What is the headline, in box-car letters on that front page?

A. "Blue Eagle to Live Until April," having to do with a news item from Washington, D. C.

Q. Any reference to your work in any of the counties?

A. The second banner line, "Dyer, Crockett enlist for Progress."

Q. What is the connection there between those two headlines?

A. None at all.

Q. Mr. Pierce—your Honor will you indulge me to talk to Mr. Waldauer?

THE COURT: Yes, sir.

MR. GWINN: It will save time.

Q. Mr. Pierce, when you presented the matter to a town or a municipality, did you present it to the governing au-

thorities, the Board of Mayor and Aldermen or Town Council, or did you do that by private conversation?

A. In a great many instances it was a public assembly with the Mayor or President presiding, and in some instances it would be by the Mayor or the town going with us and having the members of the council sign that they were in favor of the appropriation, after having the proposition explained to them the same as we would the individual.

Q. Appropriation for what?

A. Whatever amount they would agree upon, be it $50.00 or $100.00, to the publicity campaign in the Huntsville Daily Register or whatever paper I was representing.

Q. Did you obtain a donation from the town of Greenfield in Weakley County?

A. Yes, sir.

Q. Do you remember the amount of that?

A. One hundred dollars.

Q. Was the canvass of Weakley County before or after you went into Gibson County?

A. Weakley was prior to going into Gibson County as I recall it.

Q. Mr. Pierce, were you—who was the circulation manager of the Huntsville Daily Register?

A. Mr. Whitaker.

Q. How long has that paper been a suspended publication?

A. Since December 22, 1935.

Q. Were you able, during the year 1936, to given any attention to its publication?

A. No, sir.

Q. Why?

GENERAL McCLANAHAN:: I object to that.

A. I was held in jail in Memphis.

MR. GWINN: Wait a minute. General McClanahan stated an objection.

GENERAL McCLANAHAN: I objected, but he answered just the same. That's all right.

THE COURT: What is the answer?

A. The answer I was kept in jail in Memphis.

Q. When did you resume your advertising campaign?

A. Where?

Q. When?

A. In January, 1937.

Q. Don't answer this question until General McClanahan objects and the Court rules on it. If you want the jury to retire—

THE COURT: I beg your pardon—

MR. GWINN: I don't want to offend any of the proprieties. Go ahead and ask the question.

Q. Mr. Pierce, how come you to be in jail during the year 1936?

GENERAL McCLANAHAN: I object to that, your Honor. It is immaterial to this trial; it has nothing to do with it at all.

THE COURT: You mean that was the time he was in jail pending the action on appeal?

MR. GWINN: Yes, sir.

THE COURT: You may answer the question.

A. I was kept in jail here in Memphis because I had been denied bail pending the outcome of my appeal on the former trial.

Q. Just one more question. Mr. McClanahan has examined you at great length in regard to the value of the page advertisements you gave to the different counties that you canvassed in which you solicited and obtained funds. Without entering into any argument on that matter I will ask you to state your own belief as to whether or not that advertising was of value to these counties.

A. Professionally my opinion is that unquestionably this publicity has been meritorious and of great value to each and every community, and sharing that opinion are such men as Senator Capper of Kansas; from the Arkansas Legislature; representative business men and concerns in different localities; so much so that men from my own home

town, when I returned there, after my unfortunate experience here—

GENERAL McCLANAHAN: If your Honor please—

MR. GWINN: Don't go into that.

GENERAL McCLANAHAN: It is rambling far afield; it isn't competent at all.

Q. Mr. Pierce, I will ask you this question. From your experience as a newspaper man and from your experience in specialized advertising, state whether or not there is any yardstick by which you can definitely determine the value in dollars and cents of publicity advertising?

A. No, sir, advertising of that character has an intangible value. It can't be seen or felt except as the results accrue after the publicity is over. As a merchant will advertise his wares, a community will do likewise.

Q. Mr. Pierce, in the presentation of your plan under which you state you solicited funds for advertising these various counties, state whether or not it was your belief that this campaign would have any bearing one way or another on the development of better roads and cheaper power?

A. Yes, sir. I was so saturated with the idea and believed in it so conclusively that I devoted practically my whole life to such campaigns, both editorially and in the sale of specialized advertising campaigns."

REDIRECT EXAMINATION ended

Recross Examination. By Gen. McClanahan

Q. Mr. Pierce, please cite to the jury one instance—

A. State that question again.

Q. Please cite to the Jury one instance where any advertising in any of these editions—where any county in West Tennessee has been benefitted by it.

A. I haven't gone back and checked the results.

Q. You stated to Mr. Gwinn that you were satisfied and that you knew there had been some benefit to the counties.

A. In its cumulative effect there is no doubt about its being favorable.

Q. How do you know that? In what counties?

J. E. Pierce

A. In West Tennessee I couldn't point to any given county, except the expressions of some of the people I had done business with, who were glad to see me and thought the campaign we had conducted had been beneficial in arousing the people to energetic action.

Q. Who in West Tennessee has told you that?

A. I don't recall the names of the men, but I do recall such conversations having been had.

Q. Where?

A. In different parts of the state.

Q. But you don't recall the name of one single person telling you that?

A. I had one gentleman in the Court house to-day, a very prominent citizen who commended me—

Q. Who?

A. —for what I had done.

Q. Who was that?

A. A banker from Crockett Mills.

Q. What is his name?

A. I don't recall his name. He is president of the bank in Crockett Mills and also at another place.

Q. What did he tell you about the work you had done?

A. Nothing about the work.

THE COURT: Now, General, that's going into a field of immaterial matter.

Q. Can you name anyone else in West Tennessee?

A. I can't recall their names now.

Q. Then you don't know whether this advertising has benefitted any county in Tennessee?

A. My own opinion, as an advertising expert, convinces me that in each and every community visited by me, more or less benefits were reaped.

Q. Have you followed up every community to find that out?

A. No, sir.

Q. That's just your opinion?

A. Yes, sir.

Q. You are not basing your opinion on any facts or anything done by you since then?

A. On the general cumulative effect of the advertising campaign.

Q. Just what you think about it?

MR. GWINN: Mr. Combs, repeat his last answer.

(Last answer of witness repeated by reporter)

Q. Did any one municipality in the counties of Tipton, Lauderdale, Crockett, Gibson, or Haywood that you appeared before make a contribution?

A. I don't recall now. I just looked through a few pages.

Q. Do you recall a single one?

A. I stated that I didn't recall one, General.

Q. Name a person in the town of Covington that you called on?

A. Mr. Bringle.

Q. Who else?

A. I don't recall.

Q. Where did you start out?

A. I think at Mason.

Q. You didn't go to Covington.

A. I saw Mr. Bringle at Covington.

Q. He owns gins outside of Covington.

A. I don't recall; there are two of the Bringle boys. One of them owns a gin east of there and one there.

Q. I believe you stated that when the persons you called upon were financially unable to make a contribution, you refused to accept it. Just name any person in any county in West Tennessee who tried to make a contribution and you refused to accept it?

A. When we found a man was financially unable to make a contribution, we would diplomatically excuse ourselves.

Q. You didn't diplomatically excuse yourself in any of these cases where people lived in any of these counties in West Tennessee?

A. No, sir, because those people were able to contribute

and did.

Q. You made inquiries as to every person you called on before you went to see them?

A. I wouldn't say I made inquiry of all of them, because some of them after they had contributed, would tell me to see their neighbor.

Q. But you knew all about them, didn't you, before you got there:

A. In a general way.

Q. You knew his name was J. B. or Joe or whether he was a farmer or a doctor?

A. We knew them by the names given to us.

Q. You knew whether they were able to contribute?

A. Not of my own personal knowledge.

Q. You tried to get Squire Couch to contribute, even after he told you he wasn't able, and that he was sick, didn't you?

A. No, sir; I explained my proposition to him. I was informed by his son-in-law, I believe it was, that I should see him. Mr. Ross and Mr. Roach I believe were present; I learned that he had been sick, but was informed that he was up and about, and I hesitated at first to go to see him. We went to his home and he stood in the door.

Q. He was mistaken about one of them remaining in the car?

A. As I recall it all three of us were on the porch.

Q. Mr. Roach and you and who else?

A. Robert Ross.

Q. What was the largest contribution you received in West Tennessee?

A. I think possibly $150.00.

Q. That was from Mr. Nathan Yancey?

A. No, sir.

Q. Who was it?

A. I think Mr. Fuqua?

Q. Didn't Mr. Yancey give you $150.00?

A. He gave me a check.

Q. Did you ever cash the check?

A. No, sir.

WALTER BROCK, sworn, testified as follows:

I am 36 years old, live at West, County Seat of Holmes County, Mississippi, located 148 miles from Memphis, know the Defendant J. E. Pierce and E. H. Roach. I was a traveling salesman for the Carodine Hat Company in 1934 and 1935, and as the result of an automobile accident, which deprived them of the use of their car for several days, Pierce and Roach traveled with me. They were engaged in newspaper advertising, representing the Huntsville Daily Register, carrying a bundle of these papers and exhibiting them to the prospects on whom they called. Mr. Pierce had a letter identifying him and the nature of his work. This he read to me and I have seen him show it to a number of people. The letter referred to is Exhibit——. They traveled with me 10 days or two weeks, calling on a good many people. I heard part of the sales talks.

Q. I will ask you to state, in those sales talks, whether Mr. Pierce claimed to be a representative of the Government or the TVA?

A. No, sir, I never heard him mention TVA or that he represented the Government or anything. He was representing this paper, and advertising campaign, $2,400.00 had to be put up and the paper would put up $1,000.00 and the people put up the other $1,400.00.

Q. In that campaign, or among the persons that he called upon, did he obtain few or many contributions?

A. Well, I would say about 75 per cent.

Q. Seventy-five per cent of—

A. Of the calls he made the people made contributions.

Q. Mr. Brock, when was the first time you ever heard the expression "TVA units"?

A. The first time I heard that was here some two months ago. That's the first time I ever heard of TVA units.

Q. Did you hear anybody use the word "units" in connection with the campaign?

A. Yes, sir.

Q. Who?

A. I heard him use it.

Q. In what connection?

A. Well, it was a unit, part of what they gave on this advertising."

I was working my own trade. I imagine I heard about half the sales talks. I was not with them in Dyer and Crockett Counties, and do not know what they may have said to the Government witnesses whose names you call."

"MR. GWINN: If the District Attorney wants to, I am willing to concede that none of the witnesses, unless otherwise called to the attention of the Court, were present when the matter was presented to these persons you have named.

GENERAL McCLANAHAN: I can't see the materiality of these witnesses now. This defendant is not on trial for what he might have represented to other people. The last witness is from Mississippi, which is out of the jurisdiction of this Court.

THE COURT: The Court thinks the evidence should be received. The guilt or innocence of the witness is on the counts on which he is being tried, but this is part of the development of his case. The Court will receive the evidence of course."

J. C. HAMLETT, sworn, testified as follows:

I live at Crockett Mills, Crockett County, Tennessee. I am in the banking business and look after my farms. I met Mr. Pierce the first time when he came to my place of business in his advertising tour. He said his business was advertising. He showed me some papers in which he carried community advertising and had page advertisements of various counties. Mr. Roach was with him. In the course of his conversation, after he showed me the spread of the advertisement, like he was carrying in other places, I asked him what his terms were, and he said as a matter of convenience we are selling it in units of $10. a unit; you can

buy as many units as you want to." He did not offer to sell me TVA units; never mentioned TVA. I paid him by check which I wrote myself. It shows it was given for advertising. I make the check Exhibit No.—— to my testimony. Mr. Pierce did not claim in any way to be acting in a Federal official capacity.

CROSS EXAMINATION.

I am President of the parent bank at Bells; Crockett Mills is a branch bank.

Q. What kind of advertising did you buy?

A. I bought advertising to advertise the county, General, for farming, stock growth, the condition of the soil and the general outlook of the business of the County. I don't remember the wording, but the advertising came out in time, and it was very satisfactory as far as the layout was concerned.

Q. Was anything said about Muscle Shoals during Mr. Pierce's solicitation of you?

A. The only thing said about Muscle Shoals was brought out by a question I asked him. I asked him how far was Muscle Shoals and he told me and I don't remember the distance and I told him I had recently been down there.

Q. Was anything said about cheaper power for your county?

A. After he told me how far it was from Muscle Shoals, he asked me if I had ever been to Norris Dam, which is above Knoxville, and I told him I had never been up there, and he said "you ought to go sometime; that's well worth seeing, and in my opinion when they have completed that work, the whole community will be benefitted by cheaper electric lights."

Q. Did you get the paper?

A. Yes, sir.

Q. Ten times?

A. Twenty. I wouldn't say positively I got every issue.

Q. Did he advertise Dyer and Crockett County?

V. W. Bringle

A. Sometimes Crockett, sometimes Dyer, sometimes Gibson.

Q. In what way did he advertise your County?

A. Well, the soil conditions, the kind of soil we had; it advertised the principal crops and the contour and things of that kind.

Q. Where?

A. That was the basis of the advertisement.

Q. Where did it advertise?

A. Where did it.

Q. Yes, sir.

A. The paper? I don't know where they went, I supposed it went to every subscriber.

Q. Do you know whether your county derived any benefit from that advertisement?

A. I don't know."

I do not know that I ever said Mr. Pierce did a great work for Crockett County and did not tell him here today that he had done a great work.

V. W. BRINGLE, sworn, testified as follows:

I am a ginner and farmer, living four miles east of Covington, met the Defendant Pierce at my home. He was selling advertising in his paper in Huntsville, Alabama. Mr. Pierce, when he came to my home, greeted me as "Judge" I am a magistrate.

A. "So, after he complimented my home and farm and some other things, and myself included, why then he got down to the point of his advertising. He told me that he wanted to advertise and develop the natural and potential resources of the County and this advertising would cost, he told me, $2,400.00 or $2,500.00; that he was colling on the more influential citizens of the County to meet that expense, and if we would raise $1,400.00 or $1,500.00, whichever it was, that he would match it with one thousand dollars, that is, in regard to the advertisement that he would run in his paper. That he would give us some personal advertising; so many lines, I don't remember how many.

Q. Was there to be any extra charge for the personal advertisement, or not?

A. No, sir. So when we got to that point he asked me what I had to advertise; if I had any land, hogs, cattle, sheep, or horses or anything else. It dawned on me at that time that I didn't have a thing in the world to advertise. Mr. Pierce asked me then if I wasn't an advocate of cheaper power, good roads and TVA or something to that effect, and I told him I was.

Q. In that connection did you make any inquiry as to what capacity he was there in?

A. Him and my self discussed different things as to him, and sometime in this conversation I asked him if he was connected with the Government, and he turned and told me "Don't get me wrong, Judge, I don't represent the Government in any capacity."

Q. Did he say what he did represent, if anything?

A. He was representing the paper, in the advertising business.

Q. Mr. Bringle, did Mr. Pierce at any time in his conversation with you claim to be connected or to represent in any way in an official capacity either the Federal Government or the TVA?

A. No, sir, he did not.

Q. You say something was said about cheaper power or TVA. Do you remember the exact language on that point?

A. No, sir, I do not, Mr. Gwinn, because if he said cheaper power, I naturally connected it with TVA, and if he had said TVA I would have connected it up with cheaper power.

Q. Why?

I gave him a check for $50.00. I went to Covington that morning, saw my brother, told him Mr. Pierce was in Covington, that I had bought enough advertising for the Bringle family and that if he saw him coming to put both hands in his pocket and move along. About that time Mr. Pierce came up and asked me where I was going and I said I was afraid he might try to sell me again. Mr. Pierce showed me a page

advertisement in his paper and said it would be that type. My brother made a contribution after I had talked to him.

CROSS EXAMINATION:

After he called me "Judge" it was easy for him to sell me; he was a pretty good talker and did most of the talking. In fact I was so full of flattery I could scarcely breathe. He either knew all about me before he came or pretty soon found out. The first thing he said was "Heilo, Judge."

"Q. Squire, was Mr. Pierce dressed then the same as he is now; did he have the same appearance?

A. No, sir, Mr. Pierce looked very much like a Statesman to me, General. His hair was down, flowing. He had on a big black hat and had a cane over his arm and a beautiful dark suit.

Q. Anything else about him? You say he did most of the talking?

Q. You didn't have a chance to talk?

A. I would let him talk just to hear a little more flattery about myself.

Q. And after he left, that sort of subsided enough for you to tell your brother not to give him any more?

A. I thought I had invested enough in advertising three hundred miles away from home.

Q. Something was said about TVA?

A. General, I just couldn't say now whether he did or not, as I explained to Mr. Gwinn. I wouldn't say that he said TVA or cheaper power, but he said one of the two and I connected it.

Q. Did he say anything about Muscle Shoals?

A. I think I told him I had been to Muscle Shoals and his town, too, Huntsville.

Q. What was he going to advertise, Squire—I mean Judge—I beg your pardon.

A. Natural and potential resources. I knew what natural was.

Q. But you didn't know what potential was?

A. No, I didn't know what potential was about.

V. W. Bringle

Q. Do you know what potential means?

A. I think I do.

Q. What does it mean?

A. I think it is a sort of nightmare, from bad drinking.

Q. You didn't know whether potential meant high tension wires or not?

A Naturally I have been handling electric appliances and I knew a high tension line from just an ordinary wire.

Q. You didn't know whether that meant TVA or not?

A. Well, I just thought TVA and cheaper power meant the same.

Q. He wanted to quote you as being for cheaper taxes and better roads and cheaper power?

A. That's right.

Q. And of course you were in favor of that?

A. Oh, yes.

Q. You were very anxious to get TVA in?

A. Yes, sir.

Q. And he told you to buy this and you could bring it in much sooner?

A. I don't think so, General.

Q. You don't remember whether he did or not, Squire?

A. I am quite sure he did not.

Q. What did he do or say that lead you to believe that he might be a Government man?

A. Just from his appearance.

Q. From anything he said?

A. No, sir.

Q. When you saw him, you thought you must obey the Master's voice?

A. Not necessarily so. He just had the right way of meeting people and they fell for it.

Q. And did you fall for it?

A. Fifty dollars worth.

Q. I will ask you what benefit Tipton County got from that advertisement, if you know?

V. W. Bringle

A. General, I don't think that's a fair question, because I am not in position to say just what benefit Tipton County derived.

Q. Are your taxes lower than they were in 1935?

A. No, sir, I believe the County Court raised the rate.

Q. They are a little bit higher since he visited you?

A. Yes, sir.

Q. Are roads better now than they were in 1935?

A. Better than we did have then.

Q. We had good roads then, didn't we?

A. I think so.

Q. This is one of the issues you received? (Newspaper)

A. It has been a good while since I received this paper, General.

Q. That's all right.

A. I think that's practically a copy of the same edition.

Q. And do you know of any interest that this advertisement has stimulated in Tipton County?

A. Well, I couldn't say, because I really sort of hesitated to say anything about subscribing to the paper and I think the others did, so we didn't talk about it much.

Q. You are a little ashamed of it?

A. It sort of burned my pride a little bit.

Q. Do you remember receiving a paper, "Tipton, Lauderdale and Haywood welcome you this Easter?" You were welcoming the rest of the country on Easter?

A. I don't like to be selfish and I expect I was.

Q. Did that advertise the natural and potential resources of Tipton County any?

A. Well, I just wouldn't say that it did or didn't.

Q. You haven't heard of any interest being stimulated by this paper coming into Tipton County?

A. I couldn't say that I have.

Q. Squire, were you present at the talks he made in Crockett, Gibson, Lauderdale or any other counties?

A. No, sir.

Q. And what he might have told other people, Tom An-

derson, Cale Witt, Clarence Luckey, or Mr. Blackman and others you don't know?

A. I don't know what he said, but I have a pretty good idea about how they felt.

Q. About like you did?

A. Yes, sir.

Q. And you were not hard to sell?

A. No, sir."

REDIRECT EXAMINATION.

Since Mr. Pierce was there, we had an extension of rural electrification and have formed a voluntary association. This has been agitated and extended since Mr. Pierce was there.

Q. Mr. McClanahan has read from one of the 20 advertisements published for Tipton and these other counties. I am going to read you one that has been made an exhibit, of date June 27th, containing *"We favor Cheaper Power, lower taxes, better roads,* over the names of the sponsors or contributors of that campaign. Did Mr. Pierce ask your permission to quote you as favoring those things in his advertisement?

A. Yes, sir.

Q. And did you give him that permission?

A. Yes, sir.

Q. I will read you from that advertisement, just one paragraph. It has already been read into the record. *"The taxes in Tipton Lauderdale and Haywood are higher than a great many of Tennessee's* TE *counties enjoy, and without mincing words, people of each of these counties go on record as favoring and demanding a substantial reduction."* Was that statement true?

A. As far as our county was concerned, yes, sir, I can't speak for the other two.

Q. And was that advertisement or that part of it that I have read, in line with or something different from the talk

that Mr. Pierce made to you there?

A. In line."

RECROSS EXAMINATION.

Taxes have been increased inTipto n County since Mr. Pierce was there, this resulting from a bond issue voted in referendum.

"Q. Was there anything said by Mr. Pierce in this paper that had anything to do with bringing TVA into Tipton County?

A. I couldn't say it did or did not, General.

Q. He didn't put you in here as Judge. He put you in here as Squire. Didn't you resent that a little bit?

A. No, that's the position in which I belong.

Q. You paid for a Judgeship.

A. Well, I guess I did."

J. C. HAMLETT, recalled.

I do not know what conversations Mr. Pierce had with Dr. Conyers or persons other than myself in Crockett County nor in Gibson County.

R. E. ROSS, sworn, testified as follows:

I live at Trenton, Tennessee, am constable there now, was a traveling salesman when I was employed by Mr. Pierce to ride over the county (Gibson) with him and Mr. Roach. Sheriff Jones told me that a man wanted me to ride with him and Mr. Pierce established contact with me. I went with him for four full days. I estimate that we called on 20 to 25 persons each day. Mr. Pierce, when he employed me, stated that he was putting on a twenty weeks' campaign in advertising, and showed me a letter (Exhibit No.——) identifying him and the character of his work. This letter Exhibit No.—— is the letter he had. I read it before I went to work for him. His sales talk were in line with this letter and he read the letter to a good many of the prospects. I heard quite a few of these sales talks. Mr. Pierce did not claim to represent the Government, but stated that he was a newspaper man, and never claimed to have any connection with the Federal Government or the TVA. They had some newspapers showing

the advertisements of where they had worked in Alabama, Mississippi and Tennessee, and these were exhibited to all the prospects. Mr. Pierce did not state that the Government would match funds contributed by the prospects. Most of the persons on whom he called made contributions. He did not tell any who failed to contribute that he had any connection with the Federal Government or the TVA. In his sales talks he often said that he advocated cheaper power, better roads and cheaper taxes. I was present when he presented the matter to Esquire Couch and I think I heard all the conversation. He had the same bunch of papers he had all along and these were exhibited to Esquire Couch. During the time I was with him, and in the sales talks he made, I did not see any map exhibited to any prospect. In the sales talk to Esquire Couch, Mr. Pierce did not claim to represent the Government or the TVA. I think such a claim would have made an impression on my mind. In all cases a receipt was given to the contributor, this being written while he was talking to him. There was nothing about the manner of giving this receipt that attracted my attention.

CROSS EXAMINATION.

I received $4.00 a day compensation; did not buy any advertising, my name was in the paper, did not hear all the sales talks but heard most of them, do not recall those I did not hear.

He usually got names and information about the next prospect from the person he was talking to and in some cases he would ask me when I knew. I heard him call some by their first names. I was not present when he talked to any Government witness except Esquire Couch. He told him he was putting on a 20 weeks campaign. He called his "Esquire". His talk was along the same line as his talks to the others—told him he was putting on a twenty weeks advertising campaign advocating good roads, cheaper power and lower taxes. I "never heard TVA or Muscle Shoals mentioned during any of that conversation."

I never heard him say anything about TVA.

Q. You testified back in February, didn't you?

A. Yes, sir.

Q. I will ask you if these questions were asked you, and if you made these answers:

> *"Q. You say he didn't mention TVA?*
> *A. No, sir.*
> Q. I will ask you whether or not, on the last trial this question was asked you and you made this answer:
> *"Question: But you heard him talking a lot to the people in your county about TVA power, didn't you?*
> *'Answer: Yes, sir.*
> *'Question: And he was doing a lot of talking about TVA too, wasn't he?*
> *'Answer: Well, I did not hear him say so much about TVA. It was more about Muscle Shoals.'*

Q. Is that right? That was at the first trial?

A. I don't say if I did or didn't.

Q. You won't say?

A. No, sir

ERNEST N. DRAKE, sworn, testified as follows:

I live at Brownsville, Tennessee; was formerly sheriff of that County and am Superintendent of its Sanitary Department. I know the Defendant, J. E. Pierce and rode over Haywood County with him for about three days in 1935. He was conducting an advertising campaign, advertising good roads, schools, cheaper power and lower taxes. Copies of the Huntsville paper were exhibited to the prospects, showing where they had sold in other counties of the state. These papers were used in demonstrating the plan to all persons on whom they called. Roach had these papers. Mr. Pierce had a letter identifying him and the nature of his work. I heard it read. The letter you have just read (Exhibit No.——) is in substance the letter he read to nearly every man he talked to. His sales talks were in line with that letter. In the sales talks I heard and in my association with

him, Mr. Pierce never claimed to be representing or a representative of the Government or the TVA, either where he obtained or did not obtain a contribution. About half the persons on whom he called made contributions. He never offered to sell TVA units while I was with him and I reckon it was after his trial when I first heard that expression.

CROSS EXAMINATION.

He was in Haywood County in the spring of 1935. There might have been three or four of his sales talks I did not hear. He would make inquiries about prospects, including their first name, from me and I could tell him who I thought was able to buy.

"Q. And he would get out ofthe car and say "Hello, John", or "Bill", or "Hello, Mr. so and so," or "Colonel or Squire?" Is that the way he approached them?

A. I never heard him say that except to one; that was Squire Evans.

Q. And he called him Squire?

A. Yes, sir..

Q. He would always introduce himself?

A. I introduced him mostly.

Q. He introduced himself sometimes?

A. Sometimes, yes, sir.

Q. Did you ever hear him call anybody by their first name?

A. No, I don't know that he did."

I heard some of the prospects say they were hoping they would get TVA, and I think he said in days we would get it here.

"Q. In days?

A. It was coming, yes, sir."

If a man had anything to sell, he would advertise that free of charge. He paid me $3.00 a day I think. He never said anything about giving me an ad in the paper. That was not part of the contract.

"Q. How did he advertise in the paper for you?

A. Well, I don't know. I was talking about running for road supervisor and I think he heard a lot of them talking to me.

Q. He had you as a candidate for road supervisor?

A. I was a candidate.

Q. You didn't advertise yourself as a candidate?

A. No, sir.

Q. Did you authorize him to do that?

A. No, sir, I didn't announce at the time.

Q. He announced for you, didn't he?

A. Yes, sir.

Q. He was managing your political campaign?

A. No, sir.

Q. I see here it says your friends are urging you for road supervisor. Did that get you any votes in Haywood County?

A. I don't reckon it did.

Q. Has that advertisement lower[illegible] taxes in Haywood County?

A. I don't think it has.

Q. Has it brought better roads in [illegible]here since then?

A. Well, I don't know. We've got better roads than we used to have.

Q. In 1935?

A. They are gravel roads, all of them.

Q. The WPA is doing that.

A. They have been doing that.

Q. Did Mr. Pierce have anything to do with the WPA?

A. I don't guess he did.

Q. I believe you stated that you heard him make his sales talks to all but two or three?

A. Most of them.

Q. As a matter of fact, didn't you walk away from most of them?

A. I might have walked away from them when there was a crowd.

Q. You testified here before?

A. Yes, sir.

Q. I will ask you if this question was asked you at the last trial of this case, and if you made this answer:

> *"Q. Did you hear few or many of their sales talks that Pierce made?*
> *A. I heard right smart of it. Sometimes I would hear them all and sometimes I would introduce them and go off and talk."*

A. That's what I say now.

Q. Is that what you said in that trial?

A. Yes, sir.

Q. I understood you to say on direct examination that you heard practically all of his sales talks.

A. I didn't hear all of them.

Q. Didn't you say you heard all but two or three?

A. I might have said that I heard most of them.

Q. Was this question asked you at the last trial, and did you make this answer:

> *"Q. You said he was selling papers?*
> *A. I mean he was selling his paper—he was editor to a paper, getting paper subscriptions."*

A. Well, he said he was editor to a paper the way I heard it.

Q. How many people did he call on at the time you were with him?

A. I couldn't say.

Q. About how many?

A. We rode three days and called on a good lot of people.

Q. Were these questions asked you at the last trial, and did you make these answers?

> *'Q. About how many people did you see during three days? Just approximately?*
> *A. I don't know; we called on right smart.*

Q. Would you say as many as 50 people?
A. I expect we did.
Q. In three days?
A. Yes, sir.
Q. About how many of those conversations did you hear out of the fifty?
A. Well, I couldn't say; I didn't pay any attention to it. I would introduce them to him in the store or gin and sometimes I would hear the conversation and sometimes I would be talking.
Q. Do you think you heard as many as half of them?
A. I would say I did, yes, sir.'

Q. Did you make those answers?

A I reckon I did, yes, sir.

Q. Were these questions asked you at the former trial and did you makes these answers:

'Q. About how many of that number that you saw, about how many did Mr. Pierce sell?
A. How many did he sell?
Q. About what per cent did he sell?
A. I don't know, sir.'

Q. you didn't know then how many he sold?

A. No, sir I don't reckon I did.

Q. But you know now? You know now how many he sold?

A. No, sir, I don't know how many he sold.

Q. You said he sold over fifty per cent.

A. I said that he might have sold fifty per cent.

Q. You didn't say "might" to Mr. Gwinn. You said about fifty per cent.

A. I might have said that.

Q. You don't remember whether you told him that or not?

A. I don't remember whether I told him 50 per cent or not.

Q. How would these people pay him when they bought,

by money or checks?

A. Check.

Q. Who wrote the check out?

A. Well, I think in a majority of cases he wrote them; sometimes the man would write it."

A receipt was given to the customer, but I do not know whether it was open or folded. I did not pay much attention.

"Q. You were more interested in your three bucks than you were in anything else?

A. I reckon I was; that's what I went for."

I was not with him in any other county and do not know what he might have said to the Government witnesses.

ARTIE B. DANCER, sworn, testified as follows:

I live at Selmer, Tennesee, am not now employed but have been toll collector for the bridge at Savannah. I went over part of McNairy County with Mr. Pierce early in 1935. I did not know him before that time. A Mr. Robinson connected with the Chevrolet Company told me a man selling advertising wanted me to show him where the different folks lived. I went with him three or four days he had a pretty good bundle of newspapers and used them to show where he advertised the property and resources and things like that. He told his customers that he was soliciting funds for advertisements in his paper and in the sales talks I heard, he did not claim or represent that he was connected with the Government or the TVA. In presenting his plan I never heard him say anything about TVA units. He referred to advertising units.

CROSS EXAMINATION.

I was with him three or four days. I imagine I heard 12 or 15 of the sales talks. I reckon we called on 15 or 20 people. I don't know whether I heard all but 5 of the sales talks. I have not checked on it. He sold 15 or 20. I knew who I was carrying him to see. He knew all about the prospect before he got there. He would call them by their first names. Most of them paid by check. He left

pretty quick after he got the receipt and went to the bank and got the check cashed. He wired money in every night. I did not see him give any receipts. I did not see any receipt passed. He put down "advertising" — he would take down from the farmer what he had to advertise. Out of the list of 28 names you have read, I only heard the sales talks to two of them. The only thing I heard about bringing cheaper power into McNairy County was something said about Pickwick Dam, and we would have cheaper power some day. He talked all the time about this paper, showing the advertisements. I was close enough to see that he had the papers in his hands. I was not with him in any county except McNairy.

RE DIRECT EXAMINATION.

I heard some of the sales talks. The newspapers were used in presenting his plan to all the persons on whom he called.

J. C. RAY, sworn, testified as follows:

I live six miles east of Dyersburg, Dyer County, Tennessee; have been Foreman of the Grand Jury the past four years and before that time was a Deputy Sheriff. I became acquainted with Mr. Pierce in 1935 and went with him over Dyer County for three days. He was selling advertisements. I do not remember whether he showed me a letter or not. He had a bundle of papers—the Huntsville Daily Register, similar to the one you exhibit to me. These were used in the presentation of his plan, these being turned and the advertisements shown to the prospect. There were small spaces (indicating) I do not remember whether there was page advertisements of counties. He sold about 75 or 80 per cent of the people on whom he called. We called on 50 or 60 people. I heard most of the sales talks. In these talks, Mr. Pierce did not claim that he represented the Federal Government or the TVA or had any connection with the Government or TVA.

"Q. Did he claim to be selling TVA units; TVA stock?

A. No, sir.

GENERAL McCLANAHAN: If your Honor please, Mr. Gwinn asks the most leading questions I have ever heard.

J. C. Ray

THE COURT: Don't lead him, Brother Gwinn.

MR. GWINN: If your Honor please, may I make this statement?

THE COURT: I dont think it is necessary to make a statement when I have ruled.

MR. GWINN: I misunderstood your Honor's ruling.

Q. Mr. Ray, when was the first time you ever heard the expression "TVA" units, if you heard it?

A. I don't remember; sometime after he went away. I was talking in the neighborhood.

Q. Was that expression used in any of the sales talks you heard?

A. No, sir.

Q. I didn't get your answer.

A. I said "no, sir."

CROSS EXAMINATION

I heard most of the sales talks he made while I was with him. I was not present when he called on Mr. Nathan Yancey. He talked some about Muscle Shoals, and about bringing cheaper power and power lines into the County.

"Q. And if he would contribute to this program that it would bring cheaper power or TVA and Muscle Shoals in there sooner?

A. No, he didn't say it that way. He said it would cause it to come sooner.

Q. Sooner?

A. Yes, sir.

Q. That this advertisement would cause electricity to come there sooner?

A. Yes, sir.

Q. What else did he say about TVA?

A. I don't remember whether he said anything about TVA.

Q. About Muscle Shoals?

A. Well, that was about all that I remember that he did say in his talks.

Q. Mr. Ray before he would get to a customer he would ask you all about him?

A. No, sir, he would not ask me very many questions."

He called most of the prospects by their first names.

"Q. Most of them were farmers, merchants or ginners?

A. I imagine so.

Q. He would tell the customer what a pretty home he had, and that he would like to get a picture of it, and what a fine farm he had?

A. Yes, sir.

Q. And he had flowing hair?

A. Yes, sir.

Q. And a big, black hat?

A. White hat?

Q. White hat?

A. Yes, sir.

Q. Carried a walking stick on his arm?

A. Sometimes.

Q. And Roach held the papers?

A. Not every time he didn't.

Q. Did he hold them at any time?

A. Sometimes.

Q. How much did he pay you a day

A. Four dollars.

Q. Did he give you an ad in the paper?

A. Yes, sir.

Q. Was that a part of the consideration that he was to give you—four dollars a day and advertise you in the paper, too?

A. Yes, sir.

Q. How did he advertise you in the paper?

A. I just advocated good roads and cheaper power and good roads and I don't remember just what.

Q. Did he tell the people in Dyer County that he would bring cheaper taxes and better roads? Has he brought in any in your county since that?

A. I haven't heard any.

Q. Better roads?

A. We have pretty good roads.

Q. You had pretty good roads then, didn't you?

A. Better now.

Q. How were they built?

A. State roads.

Q. The county didn't build them?

A. Some of them, yes, sir.

Q. WPA mostly, wasn't it?

A. I don't know.

Q. Were they caused by the advertisements in this Huntsville Daily Register?

A. I don't know whether that had anything to do with them or not. He worked mighty hard.

Q. Were you inspired by what Mr. Pierce told you, or what his papers told you?

A. No, sir, I wasn't.

Q. Did he create any inspiration or public sentiment in the County?

A. Right smart.

Q. In what manner?

A. After he went away they heard about him being arrested.

Q. Did he create any public interest to make them go after better roads or cheaper power?

A. I can't say he did.

Q. You were not with him in any county except Dyer?

A. No, sir.

Q. You don't know what Mr. Pierce may have told anybody else?

A. No, sir."

W. A. PENNER, sworn, testified as follows:

I live at Covington, Tennessee; was in the grocery business there 14 years but am not doing anything now. I met Mr. Pierce, I think, in December 1935. I went with him over

Tipton County and part of Lauderdale County, working I believe for five days. Mr. Pierce told me that he was representing his paper, The Huntsville Daily Register, and wanted some one to go with him who knew the people of the county and the roads. Mr. Roach was with us.

"Q. During the five days that you were with him, did you call on few or many people in Tipton and Lauderdale Counties?

A. Quite a few.

Q. Could you approximate anything like the number of people who he called on during that period?

A. Well, it would be a rough guess, but in the five days I should think probably we called on 25 or 30, maybe more.

Q. Would you all put in a full day in trying to see people?

A. Not all of them, no, sir.

Q. Did Mr. Pierce obtain funds from few or many of the people he called on?

A. The majority of them he sold advertising to.

Q. Did you hear few or many of the sales talks he made in the presentation of his plan?

A. Quite a few of them, yes, sir.

Q. I will ask you if, in the presentation of that plan, Mr. Pierce claimed to be connected with the Federal Government, representing the TVA in any way?

A. No, sir."

I heard quite a few of the sales talks. Mr. Pierce did not claim to have any connection with the Federal Government or the TVA.

"Q. Mr. Penner, when you started out there, while you were engaged in this work, did Mr. Pierce present to you any letter of documents identifying him and the nature of his work?

A. Well, not to me. That is, I saw the letter that he showed to the people that he called on, a letter of identification.

Q. Would you recognize that letter if I showed it to you?

A. (Examines letter) Yes, sir that is the letter, the same letter.

Q. You say he read that to the prospects and persons on whom he called?

A. Well, he had a letter to show them all who he was.'

Q. Did he do that often or seldom?

A. Well, quite often when he was talking to them he would do go into a place and a man would kind of hesitate to know who he was and he would show them that letter of recommendation.

Q. Show them this letter? (Exhibit——)

A. Yes, sir.

Q. Did he have any other kind of documents or papers or literature that he used in his work?

A. Yes, sir, newspapers.

Q. Anything else?

A. Well, it seems to me he had a picture of his home or something."

Q. Did you hear him state for what purpose he was soliciting funds?

A. He was soliciting funds to pay for advertising, and he told them that Tipton County's allotment was $2,400.00 and he wanted to raise $1,400.00 and his paper would underwrite $1,000.00.

Q. Did he state in the presentation of that plan, in any of the sales talks that you heard, that the Federal Government would match any contribution made by the contributors?

A. No, sir.

Q. You said something about him having some newspapers. Did they have few or many newspaper with them?

A. Well, they had several editions, but it was in sort of book form. He would turn them and show them the different editions and the different ads, and the different people that were advertising in the paper and their business

and so on.

Q. Could you identify a bundle like that?

A. Well it was something like that?

Q. Just what was done with those papers in the presentation of the plan?

A. He would hold them up to a man and show him the paper and then the men that had the advertisement in the paper; how much advertising they bought.

Q. You say he had several editions of the paper?

A. Well, yes, sir, I would say along with some other papers that he had.

Q. Did he have any maps or anything other than those papers?

A. I didn't see them if he did.

Q. Mr. Penner, during the course of these sales talks was there a difference in the plan as presented, or was it presented in substantially the same wayy to all of the persons he called on?

A. The sales talk was practically the same thing.

Q. And in soliciting funds from people who refused to participate or contribute, did Mr. Pierce tell them that he was connected with the Government in any way?

A. No, sir.

Q. During the presentation of the plan what if anything was said about cheaper power?

A. Well, he would ask the man, when he would approach him, tell him he was selling advertising in the paper and he wanted to know if he was in favor of good roads and lower taxes and cheaper power, and naturally the fellow would say that he was. "Well," he says, "that's what we're doing; we're advertising cheaper power," and then the fellow would say, "How much am I supposed to pay for this?" and of course he would tell the man, and he would say, the man would say, "I'll give you five dollars," and Mr. Pierce would say "we don't sell any advertising except in ten dollar units; that's the minimum we sell". Of course if he was talking to a man who was a pretty big man he would buy ten units; if he

was a big operator and he very often sold ten units.

Q. Mr. Penner, in the presentation of this plan, did you hear the expression "TVA units?"

A. No, sir, not in that words. Some men would say "If I buy when do I get TVA?" and then Mr. Pierce says "Don't get me wrong, I'm not selling TVA; I'm just advertising through my paper; I'm selling advertisements; I'm not selling stock in TVA."

Q. When was the first time you heard the expression "TVA units" if you ever heard it?

A. Well, I don't know that I ever heard that, except in the court room here used that way.

Q. You didn't hear it at any time during the presentation of this plan to the person he called on?

A. No, sir."

I had no interest in his work except the $4.00 a day he paid me as compensation. I was mistaken about the date being December, it was in the early Spring of 1935. I have known Tom Anderson, the Government witness, for 15 years. I told him that two men would be down to see him on a "business proposition". I did not tell him they wanted to see him on a TVA project. I introduced Pierce to Anderson. I do not remember his greeting him as "Old Tom Anderson." They went into Mr. Anderson's office and I did not hear the conversation. Mr. Pierce did not accept contributions for less than $10.00.

CROSS EXAMINATION.

I do not know what Mr. Pierce said to Tom Anderson nor to Claud Shoaf in his sales talks to them, I did not hear them. Mr. Pierce was calling on merchants, ginners and farmers. Cheaper power was mentioned. I think he mentioned Muscle Shoals. I do not know why people asked him when they would get TVA. Most of them did not ask him that; quite a few did. They would say, "well, if I buy this, when can I expect TVA" or "will I ever get it?" I don't know why they asked this question. I do not think it was anything Mr. Pierce said

to them.

Q. What did Mr. Pierce say to them?

A. He would just tell them that he was advertising the potential needs of good roads and cheaper taxes and lower power and ask them if they were in favor of that; that's about the way he would say it.

Q. Did he tell them—excuse me.

A. If he was in favor of those things, and usually the man said "yes, I am."

Q. Did he tell them how soon they would get cheaper power in there?

A. No, sir. He would tell them it was his business to try to see if people wanted cheaper power to advertise their needs.

Q. He wanted to quote them as being in favor of cheaper power?

A. Yes, sir.

Q. Lower taxes and better roads?

A. Yes, sir.

Q. Did you hear every conversation he had?

A. No, sir.

Q. Did you hear half of them?

A. I reckon I heard more than half.

Q. About what percentage did you hear?

A. That's been four or five years ago; I couldn't hardly say about that.

Q. How would these subscribers pay him?

A. Some by cash and some by check.

Q. When he was paid by check, who furnished the blank checks?

A. Usually Mr. Pierce did or sometimes they did. Some would pay him the money.

Q. Mr. Pierce carried blank checks around with him on all of those banks?

A. Yes, sir.

Q. He was ready if they wanted to write checks?

A. Yes, sir.

Q. Who wrote the checks out?

A. Mr. Pierce wrote some and they wrote some.

Q. What would Mr. Pierce give them in return for the check or money, if anything?

A. A receipt.

Q. When did he give them the receipt, before or after they had signed the check?

A. After they had signed the check.

Q. How long did he remain after giving them the receipts?

A. Not long.

Q. He would get away right now, wouldn't he?

A. Yes, sir, say "good-bye."

Q. He was ready to leave then?

A. "Glad to have met you."

Q. How did he hand them the receipt?

A. I don't know what you mean by that.

Q. Was it open or folded?

A. I couldn't say about that, I don't know.

Q. You didn't see whether it was folded or open.

A. No, sir.

Q. How do you know it was a receipt?

A. I don't; I know he would write something and I thought that was a receipt.

Q. Then he was gone?

A. Yes, sir.

Q. How many people paid him in cash?

A. I don't know, I recall two or three.

Q. Did you take a subscription to that paper?

A. No, sir, he sent me the paper.

Q. He gave you a paper?

A. Yes, sir.

Q. Was that part of your contract, that you were to get $4.00 a day and a subscription?

A. No, sir, nothing was said about it.

Q. But he advertised you: what did he say about you?

A. I don't know.

Q. You were not a candidate for office?

A. He couldn't say much about me.

Q. "William A. Penner, automobile salesman." Were you selling automobiles then?

A. Yes, sir.

Q. He advertised you in Alabama as an automobile salesman. Is that what you got out of it?

A. (No response)

Q. Did he know you were an automobile salesman?

A. I told him I was.

Q. Before you would get to these prospects, Mr. Pierce would always inquire about them?

A. Yes, he would ask about them.

Q. Their first names?

A. Yes, sir.

Q. And he would jump out of the car and if the man's name was John, he would say "Hello, John."

A. Yes, he was friendly and nice.

Q. Talked fast?

A. Yes, sir.

Q. He was a good salesman?

A. Yes, sir, a good one.

Q. You didn't accompany him in any other county outside of Tipton and Lauderdale?

A. No, sir.

Q. You don't know what he told anybody else?

A. No, sir.

ERNEST PARKER, sworn, testified as follows:

I am a resident of Memphis, have had fifteen years experience as a court reporter, and my associates, Henry Waldauer and myself reported the first trial of this case, both for the government and the defendant, the trial being in December, 1935, each of us taking a part of the testimony.

I took and transcribed the testimony of the government witness Harris Utley, furnishing a copy of his testimony both

the government and the defendant. I have my original notes of his testimony, and on examination of the transcript, I find an error of transcription on page 270. As transcribed it says "40 miles" (referring to the amount of dirt road on the rural route) while the notes show "40 per cent".

"Q. page 272, at the top of the page, this language appears: "I said, 'that will be the only chance—to have it taken. I certainly don't have one here.' He asked me then about buying the paper. I told him 'Well, I'm not in shape to buy.' I said 'how about a mail carrier? Isn't his credit any good.'" Have you compared that with your notes?

A. Yes, sir.

Q. Is that correctly transcribed?

A. Yes, sir.

Q. Did the witness so testify in that trial?

A. Yes, sir.

Q. On page 274 of the transcript, I will ask you to compare your notes with the transcript and say if this question was asked and answered:

> *'Q. Did he say, (referring to Pierce) where he had to wire it to?*
> *A. No, sir, he did not say where he had to wire it to. He just said he had to wire the money in every night.'*

Q. Did you make a comparison of your notes with the transcript?

A. Yes, sir. That is what my notes show.

Q. Did the witness so testify?

A. He did according to my original shorthand notes. I haven't any independent recollection of it.

Q. Did you take down correctly and accurately what the witness said at that trial?

A. I feel sure I did.'

CROSS EXAMINATION.

It is very easy for court reporters to be mistaken and to make errors. I was not present at the Medina hearing.

Ernest Caldwell
J. H. Caughlin

ERNEST CALDWELL, sworn, testified as follows:

I accompanied Mr. Pierce for a part of two days in his canvass of Obion County. He was selling advertising space for a Huntsville newspaper, so he represented to me and had copies of that paper. Mr. Roach was with us. We traveled in a car. Mr. Pierce did not at any time while I was present claim to represent or have any connection with the Federal Government or the T. V. A. He paid me $4.00 for the part of two days I went with him.

CROSS EXAMINATION.

I did not hear all the talks. I heard him once or twice, but he did not make a sale to these persons. He made no claim to represent the Government in my presence. I was not with him in Crockett and Gibson counties.

J. H. CAUGHLIN, sworn, testified as follows:

I am jailer and a deputy sheriff of Dyer County, Tennessee and was a deputy sheriff in 1935. I accompanied Mr. Pierce for three days in his canvass of Dyer County. Sheriff Williamson introduced me to Mr. Pierce, telling me that the latter wanted somebody to show him around. Mr. Roach went with us.

"Q. Did Mr. Pierce inform you as to any connection he might have in a business way with a newspaper or any other concern?

A. He said he was vice president and editor of the Huntsville Daily Register.

Q. Did Mr. Pierce exhibit to you, prior to your going with him on this canvass, a letter of introduction from that newspaper?

A. He did.

Q. Would you be able to identify that letter should you see it now?

A. I believe so.

Q. Is this that letter? (Hands witness letter)

A. Yes, sir, I think so.

Q. Was this letter read to many or few or many of the

persons upon whom you called during this three days you were with Mr. Pierce?

A. Well, I think all of them. I don't know that he missed any, but I am not positive.

Q. Was this letter shown to the person or persons to whom it was read?

A. Yes, sir.

Q. Was the sales talks of Mr. Pierce to the persons called on in line with that letter?

A. Yes, sir.

Q. In your own language, state to the jury, as best you can, the plan as presented by Mr. Pierce to the persons called upon?

A. He would introduce himself and tell them that he was putting on a twenty-weeks program through his Huntsville Daily Register at Huntsville, Alabama and he wanted to quote them as being in favor of lower taxes, better roads and cheaper power, and in connection with that he would give them—he would advertise free anything they had that they wanted to advertise.

Q. What kind of a campaign was that, as stated by Mr. Pierce?

A. Advertising campaign.

Q. Advertising campaign?

A. Through the Huntsville Daily Register.

Q. Advertising what?

A. The natural and potential resources of the County—Dyer and Crockett I think were the counties.

Q. Did you hear all or part of the conversations that Mr. Pierce had with the prospects called upon?

A. There was two that I didn't hear the conversation; all except two.

Q. You were present and heard all of the conversations had by Mr. Pierce with the persons called upon except two?

A. Yes, sir.

Q. Was Mr. Pierce's sales talk the same in substance to all of the persons on whom he called?

A. Yes, sir.

Q. At any time during those conversations did you hear Mr. Pierce say he was representing the Federal Government?

A. No, sir.

Q. Or the TVA?

A. No, sir.

Q. Or of the Tennessee Valley Authority?

A. No, sir.

Q. Or that he had any connection with any of those?

A. No, sir.

Q. Did you hear Mr. Pierce say, during the course of any of those conversations, that he was attempting to sell anything that the Tennessee Valley Authority had to offer?

A. No, sir.

Q. When was the first time you ever heard of TVA units, if you ever heard of them?

A. Well, I think up here in the first trial was the first time I heard of TVA units.

Q. In the first trial of this case you heard TVA units for the first time?

A. I think that was the first time.

Q. In soliciting funds from the persons called upon, what did Mr. Pierce state as to the cost of the advertising?

A. For those two counties he said $2400.00.

Q. What two counties?

A. Dyer and Crockett.

Q. How was the cost of that campaign to be met?

A. He said $1400.00 for the two counties and the paper or "we" would bear $1,000.00.

Q. I believe you made mention of the term "ten dollars a unit" a moment ago. Will you explain what Mr. Pierce said with respect to that?

A. He said they could take $10.00, $20.00, $25.00 or $30.00 or $40.00 worth. That they couldn't take less than $10.00 in selling a unit.

Mr. Pierce refused to accept subscriptions for less than $10.00; page ads in the Huntsville Daily Register were ex-

hibited to the prospects; they had a bundle of these papers, which Mr. Roach held while Mr. Pierce turned the papers, these being exhibited as samples of the work done in other counties.

"Q. You said a few minutes ago that Mr. Pierce informed the persons he called upon that the purpose of the advertising campaign was to give publicity to the natural and potential resources of the two counties?

A. Yes, sir.

Q. What did Mr. Pierce say with respect to individual publicity?

A. He told them anything they wanted to advertise he would advertise and not make any extra charge."

Mr. Pierce gave the subscriber a receipt written on a Huntsville Daily Register receipt for advertising. I read one or two of these receipts. The receipt was signed by Mr. Pierce.

CROSS EXAMINATION.

Mr. Pierce told me he wanted to call on people who were able to buy, and did not want to call on those without money. I don't think he called any one by their given names. He might have said "Hello, Colonel" to "Colonel" Yancey. I may have told him that it was "Colonel" Yancey.

"Q. Did you hear the conversation he had with Colonel Yancey?

A. Yes, sir.

Q. And you were sitting in the car?

A. Pes, sir.

Q. Did you hear him tell him that they brought TVA in Tupelo in four months time?

A. No, sir.

Q. You were present?

A. Yes, sir.

Q. And you didn't hear that?

A. Yes, sir.

Q. But you could have heard it?

J. H. Caughlin

A. If it had been said I think I could have heard it.

Q. Did you hear him say he thought he could bring TVA into Dyer county within six months to a year?

A. No, sir.

Q. What did he tell Colonel Yancey?

A. He told him he was putting on an advertising campaign for Dyer and Crockett counties and wanted to quote him as being in favor of lower taxes, better roads and cheaper power, and I don't think I remember every word. He and Mr. Yancey they talked some, but I can't remember every word.

Q. Tell us what you remember?

A. Well, he told him he was in favor of the development of Muscle Shoals.

Q. He told him he was in favor of the development of Muscle Shoals?

A. Yes, sir.

Q. All right.

A. And he wanted to quote him as being in favor of the development of Muscle Shoals.

Q. All right, sir.

A. That's about all.

Q. Did he mention TVA?

A. I don't think he did.

Q. Do you know whether he did?

A. I don't think he did.

Q. Did you ever hear him mention Muscle Shoals to any other customer?

A. Almost all of them.

Q. All of them. And he talked about bringing cheaper power into the county?

A. Talked about organizing?

Q. Cheaper power?

MR. GWINN: Who talked about organizing?

A. Mr. Pierce.

Q. Bringing cheaper power into the county? He told all of them that?

A. Well, I think so.

Q. And talked about Muscle Shoals?

A. He said he was in favor of the development of Muscle Shoals.

Q. What else did he tell them about Muscle Shoals?

A. That's all.

Q. Did you ever hear him tell about being a classmate of Mr. Roosevelt?

A. No, sir; I heard him say he was acquainted with him." He said he knew him personally. It would usually come out when he presented the letter of introduction.

I did not follow Mr. Pierce closely enough to say whether he read all of the letter of introduction or just part of it. The two persons on whom he called when I was not present were Mr. Bishop and Mr. Moody. Mr. Pierce talked fast. His appearance is not the same now as then. At that time he wore a big Panama hat and had long hair.

We went from Colonel Yancey's place to Mr. Vial's, which took us about 20 minutes, and after we left Mr. Vial's place I believe we went direct to the bank. Payment had been stopped on the check. Pierce and Yancey had a conversation about it in front of the bank. I have had two conversations with Yancey about the matter. Pierce carried blank checks with him and usually filled out the check himself and handed it to the subscriber to sign. He gave them a receipt after they had given him the check. He did not fold the receipt in all cases but might have folded it in some. He left as soon as he gave the prospect the check.

I am sure that Pierce exhibited the letter to practically every body he called on, and that I have stated all that he said to Col. Yancey. I am responsible for his calling him "Colonel" Yancey. It should have been "Cap", but I told him "Colonel". I received $4.00 a day. I do not know whether he advertised me but I think my name was in the paper. I did not donate nor subscribe. I do not know whether Sheriff Williamson made a donation, but his name was in the paper. I think Yancey was advertised in the paper as "Colonel Na-

than A. Yancey, Capitalist and public leader. Col. Yancey has 2500 to 3400 acres of good land for sale which he will sell as a whole or in small tracts of 40 acres or more for cash or on terms." Col. Yancey authorized Pierce to advertise the land in this way. I do not remember just what Mr. Pierce said in the paper about me. I probably read the advertisement.

"Q. You say he exhibited that letter to practically everybody he called on; you are sure about that?

A. Yes, sir.

Q. Now, who held the papers?

A. Mr. Roach stood in front of Mr. Pierce, and Mr. Pierce would turn the leaves, and he would hold it at each side.

Q. You testified at the last trial, in February?

A. No, sir.

Q. I will ask you if this question was asked you an danswer made by you: *'Question: Mr. Caughlin, did Mr. Pierce tell the people where he lived? Answer: Yes, sir; and, he showed his letter of recommendation to as many as three. I don't know whether he showed it to any more, or not.*" Did you make that answer?

A. I don't know; I might have.

Q. Would you say that you did not?

A. No; I wouldn't say I did not.

Q. You recall three?

A. Yes, sir..

Q. *'Question: In connection with this selling campaign, did Mr. Pierce, or you, or Mr. Roach, or anybody else, exhibit any newspapers? Answre: Yes, sir; Mr. Roach held some papers in his hand and would turn them, and Mr. Pierce would explain the space and how they were publishing it, and showed them different counties, or states, I think, Alabama, maybe Mississippi; and, other counties in Tennessee, that he had worked.'* Did you make that?

J. H. Caughlin

A. I don't think I made that. I think I said 'Mr. Pierce turned them and Roach held them.' If I did, I didn't intend to.

Q. The other statements; did you make them?

A. I think I did.

Q. So, you don't know whether he showed it to more than three people or not?

A. Yes, I know he did show it to more than three people.

Q. What other conversation—did TVA come, bringing TVA into Dyer County come up in the conversation with Col. Yancey?

A. I don't remember if it did.

Q. If it had, you would remember it; wouldn't you?

A. I think I would.

Q. Did you hear the conversation? He wanted Col. Yancey to give $500.00; didn't he?

A. Might have I wouldn't say positively.

Q. You heard all the conversation?

A. I heard Mr. Yancey say he would give him $300.00 if he wouldn't have to pay for power coming into his home; and, he told him that he misunderstood; that it was purely an advertising campaign; and, it was like paying the preacher.

Q. Purely an advertising campaign, and like paying the preacher?

A. Yes, sir; them that was able to donate paying the preacher.

> Q. I believe on the last trial this question was asked you: *'Question: Did he say anything about giving more or less than that? Answer: Yes, sir; when they started in Mr. Yancey told him first he would give him* $150.00. *He said, 'Wait a minute; I would give you three fifty, if I don't have to pay for this power coming into my place.' Mr. Pierce said, 'Wait a minute, Capt. Yancey', says 'You don't understand this;' he said, 'This is just like paying the preacher; this is a donation for a publication,*

and whatever you feel like you can pay why I would be glad for you to do it; if you feel like you can pay $300.00 *I would be glad to have it.*"

A. Yes, sir; I think so.

Q. And he gave him a check and that check was stopped before Pierce could get back to town, within an hour's time?

A. Yes, sir; less than an hour, because Yancey was going on but it was more than an hour before Pierce went back there.

Q. 'About how long? Answer: About two hours.'

MR. GWINN: (interrupting) Are you reading from the transcript of the last trial, or first trial?

GEN. McCLANAHAN: Last trial—no, first trial.

I beg your pardon; it was the first trial.

Q. But when he did read that letter, you won't say now, whether he read it to two or three, or read it to most of them?

A. I would say that he read it to most of them.

Q. Most of them?

A. Yes, sir.

Q. And when he read it he said, 'By the way, I am personally acquainted with President Roosevelt.'?

A. Yes, sir."

REDIRECT EXAMINATION.

In three instances, I recall Mr. Pierce handing the receipt to me and I in turn passed it to the customer. Everything, so far as I could see, was open and above board.

"Q. Was there anything said to you, or to Cap. Yancey, or to anybody else in your presence, from which it might be inferred that Mr. Pierce was representing himself to be an officer of the United States, or some Department thereof?

A. No.

Q. Do you know how any person might have drawn such a conclusion from anything done or said by Mr. Pierce in your presence?

A. There would have been only one thing; that would

have been interest in the result of Muscle Shoals. I don't know whether that would have or not.

Q. What did Mr. Pierce say with respect to the development of Muscle Shoals?

A. Said he was in favor of it, and wanted to be quoted as being in favor of it."

RECROSS EXAMINATION.

The only receipts I saw were the three handed to me. I was not with Mr. Pierce in any county except Dyer. Mr. Ray went with him in part of Dyer County. I think I heard everything that was said in three days I was with him except in the two instances I have stated. Muscle Shoals was discussed with practically every prospect. Cheaper power was not discussed any more than roads. Mr. Pierce did not tell Col. Yancey that he had brought cheaper power into Tupelo in six months and would guarantee to bring it to Dyer County in 4 months.

REDIRECT EXAMINATION.

Mr. Pierce obtained subscriptions from seventy five per cent of the people he called on, and his sales talk was substantially the same to every prospect.

C. E. GARNER, sworn, testified as follows:

I am president of the bank at Trimble, but my principal business is farming. I am State Senator from Gibson County. Mr. Pierce, accompanied by Mr. Roach, called at my farm in 1935. He stated that he was publisher of a paper at Huntsville, Alabama, was for better schools, better roads, better churches, and would like for me to help the "farm advertising campaign in his paper". He stated that it would be a full page advertisement and would cost, I believe, $2000.00, and he exhibited the papers to me, the purpose of the demonstration being, I suppose, to demonstrate the advertising to me, and I gave him my check for $50.00.

In connection with the solicitation of funds for this page advertisement, Mr. Pierce did not claim to be in any way connected with the Federal Government, or acting for the Government or any of its agencies or departments.

C. E. Garner

CROSS EXAMINATION.

Mr. Pierce, I am sure, had talked to some one that knew me, and he claimed a broad acquaintance with public men, including President Roosevelt.

"Q. What did he say about the President, Senator?

A. He said that he was acquainted with the President.

Q. Personally acquainted with him?

A. Yes, sir.

Q. He said he was a prominent business man in Huntsville?

A. Yes, sir.

Q. He said he had quite a wide acquaintance throughout the United States, too; didn't he?

A. He left that impression with me, that he did.

Q. Now, Senator, what did you get from his conversation as to the purpose of his visit there?

A. What interested me in his talk was cheap power.

Q. And TVA?

A. Yes, sir; TVA was being discussed at that time.

Q. I believe you testified on the last trial?

A. Yes, sir.

Q. And this question was asked you, and answer made, I believe: '*Question: Did he tell you what the purpose of his visit was? Answer: His purpose—the impression he made on me was that he was helping to promote TVA.*'?

A. Yes, sir.

Q. And the main thing that you were interested in at this time, during this conversation, was TVA; wasn't it, Senator?

A. Yes, sir.

Q. That's what you were sold on?

A. That is what I was sold on exactly.

Q. And you made a contribution?

A. Yes, sir.

Q. And in making that contribution you thought you were making it to help promote TVA?

A. I thought this contribution might help to promote

and bring about quicker the rural development of TVA.

Q. Now, that was on account of, wasn't it Senator, on account of his broad acquaintance in Washington?

A. That had something to do with it, I will say.

Q. I will ask you if this question wasn't asked you, to refresh your memory, and answer made, after that last one: *'Question: How? Answer: Well, I couldn't say just exactly how he was going to do that, but of course organization and lobbying and things of that kind.'* Now, were you under the impression that there was going to be a lobby in Washington to help this?

A No, I don't know that I thought that far; but, I thought that there would be agitation by the Press and in other ways that would help.

Q [illegible] r the TVA?

A. Yes, sir.

Q. Muscle Shoals?

A. Yes, sir.

Q. To bring that there sooner?

A. Yes, sir.

Q. And by your contribution to that paper you could bring pressure on TVA and you would get cheap power and TVA in there much sooner than you would otherwise?

A. That is right; yes, sir.

Q. Now, did you have any farms for sale?

A. No, sir; I didn't have any.

Q. Did he offer to advertise any for you?

A. Yes, sir.

Q. Well, did you tell him you didn't have any for sale?

A. Yes, sir.

Q. You have a large family; haven't you, Senator?

A. Yes, sir.

GEN. McCLANAHAN: Well, I am right behind you, myself. I am not far behind.

Q. You have some children grown—some teaching school?

A. Yes, sir.

Q. Did you want to advertise those children as school teachers?

A. No, sir.

Q. Did you authorize them to be advertised in Huntsville, Alabama, as school teachers?

A. He asked me what my children were doing, and I told him, and he put that in as an advertisement.

Q. Now, at the last trial, I will ask you whether or not this question was asked you, and answer made, on direct examination: '*Question: What was the purpose for which he solicited funds? Answer: I understood it to be for this promotional work. The TVA was what I was primarily interested in, and he seemed to be, too, and there was a great fight on at that time for the TVA to come to our section of the country, and he said he would lead the fight.*' That is correct, isn't it?

A. Yes, sir.

Q. Now, how much contribution did you make, Senator?

A. Fifty Dollars.

Q. Fifty Dollars?

A. Yes, sir.

Q. Did you make that in cash or check?

A. Check.

Q. Who furnished the blank check for that?

A. I guess I did; I generally carry them.

Q. Who wrote the check out, Senator?

A. I don't recall.

Q. You don't know whether you did, or Mr. Pierce?

A. No, I really don't.

Q. You don't have that check with you, do you? Do you have that check with you?

A. No; I don't have it.

Q. Now, after you gave him the check, after you signed it and gave it to him, what did he give you in return for it?

A. He wrote out a receipt, or something—something about units on it, I think.

Q. Did you read it at the time he gave it to you?

A. I don't know whether I did or not.

Q. Or afterwards? Do you know in what manner he handed it to you?

A. I don't recall.

Q. Was it folded like that?

A. I just don't recall.

Q. You couldn't say?

A. No, sir.

Q. When did you read the receipt, Senator?

A. I can't answer you, there.

Q. Was that later on, after your conversation with him?

A. I may have never read it; I didn't think anything of the receipt; I was just helping to get cheaper power; I was ready to donate.

Q. You just wanted to bring TVA in there as quickly as you could?

A. Yes, sir.

Q. You live in Gibson County?

A. Yes, sir.

Q. He said they had to raise $2,000.00 in your county to do that?

A. Yes, sir.

Q. That your county had to put up $2,000.00?

A. Yes, sir.

Q. Did he say anything about who would match that $2,000.00?

A. No; I can't recall. I believe he would contribute some; I am just not positive.

Q. You would not want to say about that?

A. No, sir.

Q. Did he exhibit a letter of identification to you?

A. I don't recall that.

Q. Now, after you signed the check, and gave it to him, and he gave you a receipt, how long did he remain with you?

A. He was gone.

Q. Gone right now?

A. Yes, sir.

Q. He didn't stay any time; did he, Senator?

A. No, sir."

I live at Cool Springs in Gibson County, and was thus advertised in the paper:

> *"Q. 'Squire Charles E. Garner, Planter, Live Stock and Red Clover. Family: Mrs. Dona Garner, wife and eight daughters; Misses Margaret Garner, teacher at Rutherford; Mylie Garner, teacher at Kenton; Loudelia Garner, teacher at University of Tennessee; Elizabeth Garner, Teachers College Memphis; Opal Garner, Junior College, Martin; Edith Garner, High School, Trimble; Drucilla Garner, High School, Trimble.'"*

REDIRECT EXAMINATION..

I knew I was contributing to an advertisement in the Huntsville Daily Register, and was interested in hastening the extension of cheaper power in Gibson County. I do not know whether Mr. Pierce said anything about organizing rural electrification in the county, forming the organization or not. We later formed a community organization to hasten about three years ago. I am its presidident.

RECROSS EXAMINATION:

"Q. Was that organization formed by anything that Mr. Pierce did or said, or anything that the newspaper did or said?

A. No, sir.

Q. Did that have anything to do with forming that organization in any manner whatsoever?

A. Did not.

Q. When you made your contribution, you made that contribution not for advertising, or for buying a newspaper, I believe you said, but that was made for the purpose of bringing TVA into Gibson County sooner?

A. I thought that he would lead this fight for TVA in Gibson County.

Q. And did he lead that fight for TVA in Gibson Coun-

ty?

A. No; he got in trouble before—

Q. (interrupting) Has he ever at any time attempted to lead any fight, or his newspaper lead any fight, since that?

A. Not that I know of.

Q. Do you have TVA in there now?

A. Yes, sir."

E. C. HAPRELL, sworn, testified as follows:

I live at Millington, Tennessee, have lived there all my life, and am engaged in farming and the cotton business. For two and one half days in 1935, I accompanied the defendant Pierce in a canvass of Shelby County, Tennessee, showing him its roads. When I entered his employment, he stated that he was conducting an advertising campaign, soliciting funds for an advertisement in his paper, the Huntsville Daily Register. Mr. Roach was with us. Copies of this paper were exhibited to the prospects. It was explained that this advertisement would show the people who got the paper the advantages of the town or community, and what was for sale.

"Q. Mr. Harrell in that canvass, did Mr. Pierce claim, or represent himself to be, an officer, or employee, of the Federal Government; or, that he had any official connection with the TVA or Government in any way?

A. No, sir.

Q. Mr. Harrell, of what basis was the contribution sought for that advertisement, if you know?

A. Well, in his sales talk he was soliciting $2400.00, which he would say that "We" or "our Company" would furnish a thousand dollars. and the other would be furnished by different people in the community.

Q. In connection with the solicitation of the $1400.00, from the citizens, did he say anything about the Federal Government matching any part of that fund?

A. No, sir.

Q. Who did he say would contribute a part of it?

A. "We". I imagine by that he meant—

C. E. Harrell

GENERAL McCLANAHAN: I object to what he imagines. He said he said the word, 'We'.

THE COURT: Sir?

GENERAL McCLANAHAN: I object to the witness saying that he imagined.

THE COURT: Of course, he should state more definitely.

Q. Did he state his connection? State whether or not he gave the connection that he had with the paper?

A. Yes, sir.

GENERAL McCLANAHAN: If your Honor please, Mr. Gwinn continues to lead this witness. This witness is an intelligent man.

THE COURT: I don't think he should lead him. Don't lead him.

Q. Mr. Harrell, state whether or not you heard the expression TVA Units during this canvass, or campaign?

A. I did not. The first time I ever heard that TVA Unit, I read it in the paper, after the conviction of Mr. Pierce and Mr. Roach.

Q. Was there anything said about Units in the sales talks?

A. Yes, sir; but not TVA Units.

Q. What kind of Units, and in what connection?

A. That was Units of paper, and what a Unit is in a paper I am not able to tell you. I don't know what a Unit is in a paper, because I am not an advertising man—a paper man.

Q. On what basis did he seek contributions?

A. Well, ask that question again?

MR. GWINN: Strike that Mr. Boulware.

Q. How much contribution did he seek for one of these units?

A. Ten Dollars a unit.

Q. Did he seek contributions of amounts less than ten dollars?

A. He wouldn't take it. I saw him turn one down for five dollars.

C. E. Harrell

Q. Mr. Harrell, in connection with that advertising solicitation, or solicitation of funds for advertisements, did Mr. Pierce make any statements in regard to Cheaper Power, Lower Taxes, or Better Roads; if so, state, as best you can, what he said in his sales talks?

A. He said that he would like to get—be able to quote these people as being in favor of Better Roads, Cheaper Power, Better Schools, etc."

Q. What proportion, if you know, of the persons on whom he called did he get subscriptions from?

A. I would say eighty per cent.

Q. What kind of a salesman did you think Mr. Pierce was; successful or unsuccessful?

A. I thought he was pretty good, myself.

Q. Did he obtain any funds, or solicit funds, from the community there at Millington where you lived?

A. Yes, sir; had it from the Mayor of Millington, Williams, Clerk, everybody he called on that had any money.

Q. Were the sales talks that he made in presenting his plan substantially uniform, or were they different to each individual?

A. Practically the same.

Q. Well, In instances where people refused to contribute, did Mr. Pierce, in such situations, claim to be representing the Government, or the TVA?

A. No, sir."

CROSS EXAMINATION:

I heard practically all the sales talks, probably a half dozen I did not hear, and he sold about eighty per cent of those on whom he called.

"Q. How many did you call on?

A. I imagine we called on—I guess we called on about 100 or 150.

Q. 100 or 150 people in two and a half days?

A. Yes, sir.

Q. Pretty fast talker?

A. Yes, sir; didn't tarry long.

Q. Didn't stay long?

A. No, sir.

Q. Especially after he got the money?

A. Yes, sir.

Q. He was in a bigger hurry after he got the check than when he didn't get it—or cash?

A. Not necessarily so.

Q. What do you mean by that?

A. I mean he wasn't in too big a hurry.

Q. He was in a hurry?

A. He was in a hurry to get to the next customer.

Q. But you hurried off a little faster after it was paid for?

A. Naturally you would, when you are paid for an article in a store, you don't stay there.

Q. You don't hurry off every time you buy an article, do you?

A. If you have something to do.

Q. Well, you all had something to do?

A. Yes, sir.

Q. You say you called on everybody in Millington?

A. No, sir, not everybody.

Q. Lots of those people tried to stop the checks later on, didn't they?

A. Not that I know of.

Q. You have heard that they did?

A. No, sir.

Q. You haven't heard that?

A. No, sir.

Q. You went to the Bank pretty soon after he got the checks, didn't you; or, to the filling station to get them cashed?

A. Yes, sir.

Q. I believe you went to several filling stations to get them cashed?

A. Only went to one.

Q. Who was that?

A. Red Williams'.

Q. Whose check did you cash there?

A. I don't remember.

Q. Dr. Witherington's check, wasn't it?

A. I don't remember.

Q. How soon after you would get a check did you go to the bank?

A. I think we went to the bank about twice.

Q. That was every day around noon.

A. I don't think it was around noon; about 11:00 o'clock. We sold the Bank and we sold Paul Barrett one, and Squire one.

Q. Squire Barrett; Paul Barrett's father?

A. Yes, sir.

Q. He is dead now?

A. Yes, sir.

Q. He has been dead for two or three years?

A. Yes, sir.

Q. How much did he give you a day?

A. Four dollars a day.

Q. Four dollars a day?

A. Yes, sir.

Q. And you worked two and half days?

A. Yes, sir.

Q. Now, he got you to take him to the people who were able to buy?

A. Yes, sir.

Q. And he asked you all about them before you got there?

A. No, sir; he did not. He would ask their prospects.

Q. All he would ask you would be just to direct him to those men's places?

A. Yes, sir.

Q. He introduced himself, most of the time?

A. Yes, sir.

Q. Would get out and say, 'Hello, Mr. Bob' or 'Hello, John' or what—

A. (interrupting) Regular Chesterfield.

Q. 'What a beautiful home you have here; I would like to have a picture of that home' or his cotton-patch, or something like that?

A. Yes, sir.

Q. There was lots of talk about Muscle Shoals, wasn't there, Mr. Harrell?

A. Occasionally.

Q. Or about bringing TVA, or cheaper power, into Shelby County?

A. He didn't mention TVA.

Q. Well, call it cheaper power?

A. Yes, sir.

Q. You associated Cheaper Power with TVA?

A. Yes, sir.

Q. Everybody was interested in TVA at that time?

A. Yes, sir.

Q. Cheaper Power, was in every conversation?

A. I wouldn't say that.

Q. Practically every conversation?

A. Yes, sir?

Q. And bringing it into the County sooner?

A. Yes, sir.

Q. Is that right?

A. I don't know about bringing it into the County sooner; I couldn't say.

Q. All he wanted was just to quote them—what was said about Muscle Shoals, Mr. Harrell?

A. I don't remember.

Q. You don't remember what was said about Muscle Shoals?

A. No, sir.

Q. Something was said about it; wasn't there?

A. Yes, sir; he mentioned that he lived down close to Muscle Shoals. I don't just remember what he said.

Q. You don't recall?

A. No, sir.

Q. You don't recall what conversation was had with

them anyhow, do you? He talked pretty fast?

A. I couldn't remember all of it.

Q. He talked pretty fast?

A. No, not necessarily so."

REDIRECT EXAMINATION:

Mr. Pierce did not tarry long with any customer. "If we got a subscription, all right; if we didn't, we were go[illegible]— killed very little time at any place." We went to banks twice, obtaining a subscription from the banks on one of these occasions. Receipts were always given the customer.

RICE T. FANT. By agreement the testimony of this witness as given in the former trial was read to the jury and is as follows:

I have no interest in this case. I was summoned as a witness a few minutes ago. The defendant, J. A. Pierce, was in my place of business at Clayton, Mississippi, sometime ago. I never met him before that time, nor have I seen him since, but I recognize the defendant as the same man. My home is at Clayton but I am in Memphis a considerable part of the time. I formerly practiced law in Memphis. I was also interested in the banking business but am now operating my plantation near Clayton consisting of about 2000 acres of land. Mr. Pierce called on me at my home in Clayton and stated that he was an editor of a paper in Huntsville, Alabama and that he was soliciting contributions for an edition of his paper that would write up the Mississippi Delta territory. My plantation is located in Tunica County and I either gave Mr. Pierce a check for $10.00 or that amount in cash. He said that he was going to write up the territory and kind of advertise it. I thought that would be a good thing and I was willing to contribute that much toward doing it. Mr. Pierce did not claim to be connected with the Federal Government or the Tennessee Valley Authority in any way, but stated that he was editor and publisher of a paper in Huntsville, Alabama and advertised the territory including the County in which I lived. He did not under-

take to sell me stock in the TVA or any such thing as TVA Units and I never heard of anything of that sort.

DEWEY CLAUNCH. By agreement, the testimony of this witness, as given on a former trial, was read to the jury, and is as follows:

I live in Corinth, Mississippi, operate a taxi-cab there, and I am acquainted with the defendant Pierce. I accompanied them in a canvass of Mississippi counties for a period of about three months—I might skip a week or two—and as I understood it, Pierce was soliciting funds for advertising. He called on many people. I heard most of his sales talks. He did not claim to be an officer of the Government or to have any connection with the Government, and he would correct that impression, saying "don't misunderstand me; I am selling newspaper advertising", or something like that. "I am not selling stock of any kind, you are not buying stock."

CROSS EXAMINATION:

I do not know what made any one ask about the Government. There was something in the line of talk about they were expecting cheap electricity. Something was said about county putting up so much money and they would match it. That was for advertising in the newspaper. "*Q. How did the TVA and cheaper power come up? A. I don't know how they misunderstood that part of it.*" I never went with Mr. Pierce anywhere in Tennessee.

REDIRECT EXAMINATION:

There were general discussions of roads and cheaper power. The way I understood it he (Pierce) was community booster, or something like that. I helped him work three or four counties and we called on fifteen or twenty persons a day. All I did was to drive.

RECROSS EXAMINATION:

I was employed on a mileage basis of eight cents a mile. I worked in the latter part of 1934 and the early part of 1935, using my car. Mr. Roach was not there.

E. H. Roach

E. H. ROACH, sworn, testified as follows:

I was jointly indicted in this case with the defendant Pierce, tried with him twice, and acquitted by the jury on the second trial.

I was born and reared near Oxford, Mississippi, and educated there, attending the Oxford High School, the University Training School, and went one year to the University of Mississippi.

My business experience includes employment as telier for two years by the bank at Oxford; five years' service at various points and in different capacities for the American Express Company, being Cashier of its Baton Rouge office when I severed my connection with that company. I worked approximately five years for the Memphis Power and Light Company, Memphis, Tennessee, starting in as assistant timekeeper and working my way up to the position of Assistant Purchasing Agent when I resigned to go into the selling field. As a salesman, I was with Central Power Company, San Antonio, Texas, the Dallas Power and Light Company, Dallas, and for the Mississippi Power and Light Company through Mississippi.

I first became acquainted with the defendant Pierce in 1934. He was on his campaign through Oxford where I was engaged in business at that time. I think I went to work for him August 13, 1934, on a mileage business of five cents a mile, minimum of 100 miles a day, and gasoline and hotel bill. I used my own car. I think we canvassed 20 or 25 counties in Mississippi, say from Vicksburg across by Jackson and Meridian, and then we entered Tennessee in March, 1935. My compensation, after we came to Tennessee, was raised to six cents a mile or a minimum of $6.00 a day.

The business of Mr. Pierce was soliciting funds for newspaper advertisements, booster editions, advertising the natural and potential resources of the counties, advocating cheaper power, lower taxes and better roads, these being page advertisements, twenty copies. In addition to the write up of the county, Mr. Pierce agreed to advertise anything the con-

tributors had for sale.

The first Tennessee county canvassed was McNairy, Selmer being the county seat, and we had canvassed two or three more Tennessee counties before going into Gibson. When we would complete the canvass of the county, we would usually go into the adjoining county. Weakley, Haywood, Crockett and Gibson are adjoining counties.

There were but few of the sales talks made by Mr. Pierce in this canvass I did not hear. Mr. Pierce carried with him a letter of identification, stating who he was and with whom he was connected, and a post card folder of buildings in and around Huntsville. The letter shown me (Government Ex.——) is either the original or a duplicate of that letter.

When we entered a county, the usual procedure was to get someone familiar with the county to go with us, this being done to save time, and to get over the roads, so as to get to substantial people who were able to help promote a project of that kind. Mr. Pierce would show his letter of identification and go through his program. In making the canvass of Mississippi, we usually had county agents, but not in every instance. I was well acquainted in that state and traveled in it all my life.

In practically all counties, we had a county agent. Usually we would contact the sheriff of the county and try to obtain the services of a deputy or former deputy sheriff on account of their familiarity with the county and its people. These agents had an opportunity to hear the sales talks that were made. In many instances they did, sometimes they did not. The sales talk was made by Mr. Pierce from the time I commenced to work for him in August, 1934, until June 1935, when we were arrested in Gibson County, was substantially uniform. It was practically a "canned sales talk", the difference being the reference to a man's business or profession, whether he was banker, farmer, lawyer or doctor.

We called on the classes mentioned, including professors in universities. The University of the South at Sewanee was sold $100.00 of this publicity.

In the presentation of his plan in Mississippi and in Tennessee, Mr. Pierce did not claim at any time I was present to be an officer or agent of the Federal Government, nor did he claim to have any official connection with either the Government or the TVA, but solicited funds, and so stated to the prospects, for advertising the natural and potential resources of the county; advocating cheaper power, lower taxes and better roads. Had he claimed to be a Government man or a representative of the Government or of TVA in my presence I would have quit automatically, because I did not believe that he was and he never made any such statement or representation in my presence.

In our canvass of Gibson county, we first contacted the Sheriff, Mr. Robert Jones, and he recommended Mr. Ross to us. In Crockett County, we contacted Sheriff Montague, and I understand that he is dead.

The post card folder, to which I have referred, is Government exhibit——. That folder, copies of the Huntsville Daily Register, and the letter of identification, were all the literature we had in the canvass of West Tennessee counties, including Gibson and Crockett. We did not have nor exhibit any maps. I did not share in the profits of sales, and had no interest except the compensation I received.

Since the reversal of the conviction in the first trial of Mr. Pierce and myself, or beginning about three months thereafter, I have been employed by Mr. Pierce, assisting him in a canvass of Arkansas counties substantially the same as that conducted in Tennessee.

Mr. Pierce no longer publishes the Huntsville Daily Register, but makes a connection with some local newspaper and advertises the natural and potential resources of the county, advocating cheaper power, lower taxes, better roads and adequate drainage, this latter being added after we entered the State of Arkansas.

Instead of asking permission to quote the customer as being in favor of these things, he signs a carbon copy of the receipt. Exhibit——, which you hand me, is the kind of re-

ceipt now being used. The plan is presented in practically the same sales talk that was made in Tennessee, and the percentage of contributions is approximately the same.

In the presentation of the plan in Tennessee, I supported held the papers--The Huntsville Daily Register--while Pierce showed the prospect other counties that had come in, the customer usually standing about two feet to the right of Mr. Pierce, and just a little behind him, while Mr. Pierce read the names of different counties that had come in. Mr. Pierce held the papers, which were folded when the demonstration began, but I supported them, and the papers were demonstrated as is being done now (Plan demonstrated to jury). Mr. Pierce would be facing me, as would the front page of the papers, and Mr. Pierce would exhibit the advertisements of counties previously canvassed to the prospect, who was in a position to see these page advertisements. I do not know of any exception in which the papers were not so used in presenting the plan and the prospect was in a position to see the page advertisements. Mr. Pierce talks fast, in a voice I would call more of a loud than a low or medium tone, and he talks very enthusiastically. On the average, it took from five to fifteen minutes to demonstrate the plan. Quite often reference was made by Mr. Pierce to others who had subscribed to the plan. I have heard him call the names of prominent persons who had participated in his plan. I never heard him speak of Andrew Johnson, but I have heard him speak of Oscar Johnson's contribution.

I have heard Mr. Pierce state that he knew President Roosevelt when he was Assistant Secretary of the Navy under Josephus Daniels, but I never heard him claim or state that he and the President were raised together or were class mates or school mates. I was present when he presented the plan to C. L. Shoaf and Tom Anderson, witnesses in this case.

In reading the letter of identification, Mr. Pierce did not state to either Mr. Anderson or Mr. Shoaf that it was signed by the President of the United States. I heard the

testimony of Mr. Anderson on the former trials and do not recall his testifying that Mr. Pierce greeted him in substance, "Hello, Old Tom Anderson".

I was present at the Medina hearing. Frank Blackman testified at that hearing. That statement is based on my own recollection, and also on Blackman's testimony at the first trial in this court which I examined to refresh my recollection.

The letter of identification, as I have testified before, was presented to Reau Graves in front of his filling station. Graves accompanied us a part of two days in our canvass of the Medina community in Gibson County, Robert Ross, who started the canvass of Gibson county with us, had to leave to resume his work as a calendar salesman. Graves was present when sales were made and was in a position where he could have heard what was said.

I heard the conversation of Mr. Pierce with the Government witness, John Thomas Mathis. Government credentials were not mentioned in that conversation and the letter of identification was not presented as government credentials. The plan was presented to Mathis as to others on whom we called in that neighborhood.

I heard the testimony of Tom Lewis. Pierce did not introduce himself to that witness as old Henry Lewis, nor refuse to give him his name and address. I know of no instance in which Pierce identified himself as anyone except J. E. Pierce, Editor and Publisher of the Huntsville Daily Register.

Payments of subscriptions were made in cash or by check, and, in all cases, a receipt on the printed bill head of the Huntsville Daily Register was given to the person paying the money, and at the time of the transaction and in the presence of the prospect and anyone accompanying us.

These checks were in pads of from 50 to 100, size six by eight inches, and torn off and handed to the customer.

After the receipt was given those who subscribed, or

where they did not subscribe, we left to see another prospect. There was nothing unusual in the manner of leaving. I never knew Mr. Pierce, when he had made a sale, to run to get into the car. After the sale to Harris Utley, Graves did not run and jump some ten feet to get into the car. If he had jumped, I would have noticed it.

The first time I ever heard the expression "TVA Units" was after we were arrested in Gibson County. Such an expressio nwas never used by Mr. Pierce in my presence in the presentation of his plan. He did speak of "units of advertising"—was divided into 240 units—the plan called for the public underwriting $1400.00 and the newspaper underwriting $1000.00. Mr. Pierce did not tell anyone in my presence that the Government would match the funds contributed by the sponsors.

I was present at Medina during the magistrate's trial. the witness, Joe Luckey, was there.

"A. Mr. Luckey started toward Mr. Pierce with a knife in his hand, and demanded his money back, and the Justice of the Peace there interceded, and said 'Wait a minute, Joe; this man is under arrest.'

Q. Did you testify to that effect in the last trial?

A. I don't recall.

Q. If asked about, what did you testify?

A. The testimony is substantially the same, if I was asked that question.

GEN. McCLANAHAN: If your Honor please, I object to that line of questioning and that line of answers. He says, 'If he testified to that' He doesn't know. And, 'if he was asked that question, that was his answer' at the last term.

THE COURT: Of course, it should be more definite.

MR. GWINN: We haven't a copy of the transcript. If the District Attorney will loan us his copy we will look and see.

THE COURT: That is not the question. He was under oath. He knows what he testified to then, without having

to refer to the transcript."

When the checks were given, Mr. Pierce usually wrote the checks. I cashed a few of these checks for Mr. Pierce, but I went to bank but seldom. I naturally noticed those that I cashed. They showed they were given for advertising. This was written on the checks before they were signed. I never saw Mr. Pierce write the word "advertising" on a check after it had been signed and given to him.

I never heard Mr. Pierce tell anybody that he wired money to Washington each night or anything of that kind.

Mr. Penner introduced Mr. Pierce to Tom Anderson and Mr. Anderson's bookkeeper filled out the check. I heard the instructions given this bookkeeper by Pierce and Mr. Anderson was in a position to hear these instructions, being within, I should say, ten feet of us. The information that went into the little card advertisements, or the spaces devoted to the sponsors, was furnished by the contributor.

The plan was presented to the Government witness Cherry in the presence of myself and Frank Connell, a deputy Sheriff of Crockett County, and the information that Mr. Cherry was a prospective candidate for sheriff was given to us by that witness.

One of the objectives of the program of Mr. Pierce, referred to in its discussion with prospects, was cheaper power, encouraging it and bringing it about quicker by organization, turning the searchlight of publicity on it, advocating and boosting it, and creating a public sentiment which in his opinion would cause it to come quicker. In stating that objective, Mr. Pierce did not claim to have any official connection with the Federal Government.

I do not recall Mr. Pierce asking me on any occasion if there was enough money in the treasury to give the wife of a contributor a share. I was not treasurer of any fund, and I never heard Mr. Pierce offer to sell stock to any one at any time.

CROSS EXAMINATION:

My minimum compensation was for 100 miles a day at

five cents a mile. We traveled on an average about 900 miles a week. Mr. Pierce did not pay for my meals but paid for hotel or lodging and for gasoline. This compensation was raised to six cents a mile when we came to Tennessee. We covered twenty or twenty five counties in Mississippi and about twenty to twenty-five in West Tennessee. That is just a rough estimate. I kept no account of that. I think we covered about 15 counties in Tennessee, I do not know whether in West Tennessee, after we left Gibson County.

"Q. How many in West Tennessee did you cover, after you left Gibson County?

A. I couldn't tell you; I didn't keep account of them.

Q. Covered Crockett and Dyer, and then left didn't you?

A. No, sir; I don't think so.

Q. Well, you remember everything else mighty well, Mr. Roach. You remember what was told every witness, and what was not told every other witness; you should remember that?

A. I remember some things.

Q. You have recounted what transpired between Mr. Pierce and the witnesses.

A. Not everything.

Q. You told Mr. Gwinn that.

A. I answered Mr. Gwinn what he asked.

Q. And you answered lots of questions that he didn't ask, too; didn't you?

A. I don't recall any of those.

Q. You volunteered some answers that Mr. Gwinn didn't ask you—continued, before you finished answereing the question; didn't you?

A. I don't recall, General.

Q. And you said in no instance—you related everything that was said to the different witnesses; didn't you?

A. No, sir; not everything.

Q. And you said—you have been here through two trials; have you, Mr. Roach?

A. Yes, sir.

E. H. Roach

Q. And you have heard the witnesses testify in two trials?

A. Yes, sir.

Q. And you heard Mr. Pierce testify in two trials?

A. Yes, sir.

Q. And you have been with Mr. Pierce constantly since August, 1934; haven't you?

A. No, sir.

Q. What exception?

A. For practically two or three months after we were released.

Q. With the exception of two or three months, you have been in Pierce's employ, or right with him?

A. Yes, sir.

Q. And you all ride together every day?

A. When we are working.

Q. When you are working?

A. Yes, sir.

Q. And he pays you?

A. There was one exception, that four months I was incapacitated, with a fractured leg.

Q. With the exception of about six or seven months, you have been with Pierce?

A. Yes, sir.

Q. You stayed with him in 1934 traveling all over Mississippi?

A. Over quite a bit.

Q. Twenty or twenty five counties?

A. Yes, sir.

Q. And stayed with him in 1935, traveling in Tennessee, beginning in March, and you have worked together all the way through?

A. Yes, sir.

Q. And, in 1936, were you together then?

A. Yes, sir; we certainly were.

Q. Where was that?

A. Shelby County Jail.

Q. Shelby County Jail?

A. Yes, sir.

Q. Why were you in jail?

A. Detained without bond.

Q. On what?

A. Convicted by the Court, here, in Memphis, awaiting decision of the appellate court.

Q. Awaiting appeal?

A. Yes, sir."

As an employee of Mr. Pierce, I worked with him in the State of Arkansas most of the time in 1937, 1938 and 1939, and with the exceptions stated I have been the employee and companion of Mr. Pierce since August, 1934. I have not listened to all of the sales talks since I quit holding the papers, and I quit holding the papers when we went into Arkansas.

"Q. But when you were holding the papers you made it a point to listen to everything that was said?

A. No, sir.

Q. Why didn't you?

A. I was in front, and naturally would hear it.

Q. You testified at Alamo?

A. Yes, sir.

Q. Didn't you testify at Alamo, on direct examination, that you made it a point to hear everything that Mr. Pierce said, for your own protection?

A. I don't recall that.

Q. You don't recall that?

A. No, sir.

Q. Do you remember testifying in the first trial?

A. At Medina or here?

Q. I will ask you whether or not, in the first trial here in December, 1935, on page 772, along the last of that page, '*Now you testified up in Alamo, didn't you? Answer: Yes, sir. Question: And I want to ask you if this question wasn't asked you, and you didn't make this answer:* (*Ques., by Mr. Avery*)

Answer: Yes, sir; he was there. Question: Buck Avery; was it? Answer: That is right. Question (quoting again) 'You go along with him and listen to what he says—for what? Answer: As a matter of my own protection, as well as anything else.' Answer: That is correct.'

THE WITNESS: Now, may I ask the stenographer to read how you asked the question, just now, General McClanahan?

(Question read.)

THE WITNESS: As I understand it, Gen. McClanahan, it is two entirely different questions.

Q. All right, I will ask you over: At that first trial were those questions asked you, and those answers given?

A. From the transcript of the Alamo case?

Q. No those questions I asked you from the transcript of the first trial?

A. That is substantially correct.

Q. So, then you did go along for your own protection, then; didn't you?

A. Well, it was a matter of looking into it further. You might say I was checking myself up—we had been detained in the Gibson County Jail, and I didn't think anything like that could happen about me and me not hear it.

Q. But you stated you didn't go along to listen for your own protection; didn't you? On cross-examination?

A. No, sir; I said that I did. I think I testified to that at Alamo.

Q. I am not asking you what you testified at Alamo; I am asking you what you testified a few minutes ago?

A. You asked me a minute ago if I didn't go along to hear everything that was said.

Q. For your own protection?

A. Not necessarily so.

Q. Why?

A. Because, I had been with Pierce so long I knew his sales talk from A. to Z. I knew if he deviated it would be like

Joe Lewis hitting me.

Q. You know it off by heart, and Mr. Pierce and everything he says, off by heart; don't you?

A. No, sir.

Q. I will ask you if, on the first trial, if you were not asked these questions, and if you did not make these answers:

'Question: You go aiong with him and listen what he says—for what? Answer: For my own protection. Question: Protection from what?

THE WITNESS: Against any future trouble that might be worked up like that in Medina.

Question: All right, Mr. Roach, if that was a legitimate proposition, and you were so satisfied that it was, why were you afraid any trouble would come from it?

Answer: It might be all right in that case, but a lot of people might get confused.'

Q. Did you mae those answers to those questions?

A. I assume that I did.

Q. I am not asking you to assume.

A. I can't recall that word for word, Gen. McClanahan.

Q. You say this was a canned sales-talk that Mr. Pierce had?

A. More or less.

Q. What do you mean by a 'canned-sales talk'?

A. Same routine; advocating the same things, through the same newspaper.

Q. Now, you have been with him all this time, and you expect to continue with Mr. Pierce?

A. I don't know about that. I never was satisfied with any job all the time. I made six thousand dollars one year, and always looking for better employment.

Q. You have stayed with Mr. Pierce just as long as anyone?

A. Yes, sir, just about.

Q. And you are loyal to your employer?

A. And will continue to be as long as I am associated with him.

Q. As long as you are associated with him?

A. And he compensates me.

Q. And he compensates you?

A. And lives up to his contract.

Q. And pays off?

A. Yes, sir.

Q. Now, Mr. Roach, when you all were traveling in Tennessee, you all went to the Bank every day; didn't you?

A. Most every day, General; I don't know of any exceptions.

Q. In Arkansas, when you left Tennessee and went to Arkansas, you have got a different plan of advertising; haven't you?

A. Have a different receipt.

Q. Is that all that is different?

A. Different receipt; the program is practically the same.

Q. Yes, but it is put on by a local paper?

A. Yes, sir.

Q. And it is advertised as that county, and what people have to sell in that particular county?

A. Yes, if they have anything they want to sell it is listed free, as it was in Mississippi and Tennessee."

The difference in presenting the plan to a farmer, a lawyer, a banker or doctor would be the method of approach—talk banking with a banker, farming with a farmer, law with a lawyer, but most prospects were farmers.

"Q. What would he talk to Doctors about? Any particular disease?

A. No, sir; I don't recall his talking about any disease at all. He was talking about professional business, and the health of the community.

Q. And then inquire as to the health of these prospects around there?

A. No, sir; I never heard him inquire as to the health of prospects.

Q. In talkng to a doctor, tell us what difference there would be in selling this stuff to a doctor and a farmer?

A. I tried to explain that there was no difference to amount to anything, except he would talk along a line on business, as to the health of the community.

Q. Would he inquire as to the health of the whole community?

A. No, sir; not necessarily. In some instances.

Q. Tell us what he would inquire about?

A. In talking to him, he would ask how the health of the community was; wouldn't put any stress on it.

Q. And would he ask how Col. Jones was?

A. No, sir.

Q. When he visited a Veterinarian, would he ask about the different cows and horses that were sick?

A No, sir; I don't recall that.

Q. When he called on a lawyer, I reckon he would talk about the law business? How the law business was?

A. Not necessarily.

Q. That work 'not necessarily' is rather confusing. What do you mean by that?

A. In some instances he might ask how his practice was, and in some not.

Q. Give us some instance of some lawyer that he asked about his practice?

A. I don't recall any.

Q. When he would go to the banks he would inquire about the banking business?

A. Quite often get statements of the bank.

Q. Would he get a list of the depositors?

A. I never heard such an inquiry; never went in the bank with him very often.

Q. Would he inquire about the financial standing of people in the community?

A. I don't recall that.

Q. Did you ever hear him talk to the bankers?

A. Yes, sir.

Q. In what banks did you ever hear him talk to the bankers?

A. One I recall was at Coffeeville, Miss.

Q. I am asking you in Tennessee?

A. I don't recall any specific ones, right at this instant —moment.

Q. Do you recall any lawyers?

A. No.

Q. I reckon when he would go to see preachers would he inquire into the religion of the community?

A. I don't recall any such talk as that.

Q. I wish you would explain to us about the difference in these conversations that he had; what was the difference between lawyers and farmers?

A. I did the best I know how.

Q. You say you don't recall.

A. Not any specific cases.

Q. You recalled the specific case about Mr. Utley, Mr. Tom Anderson, Mr. Luckey, and all the rest.

A. That wasn't routine.

Q. Wasn't routine?

A. No, sir.

Q. It was routine when you went there, wasn't it?

A. Yes, sir.

Q. You recall about other instances that happened all the way through, don't you—about Mississippi. Your memory has been very clear on lots of things. Your memory has been very clear on most things.

A. I never had any trouble about recalling them.

Q. Just tell us a specific instance that he called on.

A. I don't recall a specific instance; if you will give me a specific instance, I will try to recall it.

Q. All right. What conversation did he have with Col. Yancey? Do you remember Col. Yancey?

A. I remember the conversation with Yancey.

Q. Where does Yancey live?

A. In the Dyersburg neighborhood, out this side of Dyersburg.

Q. Tell us where you met him, and the conversation you had with him.

A. If I recall correctly, he was headed toward Dyersburg in his car.

Q. All right; go ahead.

A. And he came over and sat on the front seat with Mr. Pierce.

Q. Sat on the front seat?

A. As I remember.

Q. Well, you remember; don't you?

A. I think I am correct in that.

Q. Go ahead.

A. Now, what was was the question?

Q. I asked you what took place with Yancey?

A. He presented his proposition to him.

Q. What proposition?

A. The advertising program.

Q. Advertising what?

A. The natural and potential resources of the community.

Q. What was the natural and potential resources of the community, Mr. Roach?

A. I imagine it was water, and timber, and most anything else that God endowed. That is the natural and potential resources. That is what I term it, Gen. McClanahan. You possibly have a better idea of it than I.

Q. I am not testifying; you have been selling the natural and potential resources all over Tennessee, Mississippi, Alabama and Arkansas.

A. I have never attempted to.

Q. You attended every one of the sales, and you say that is what he was selling. You ought to know about it; shouldn't you?

A. Yes, sir; I have a general idea. As I understand, Natural Resources is what God endowed; oils, minerals and timber; and, the Potential Resources are, the things you possess by reason of the natural resources.

Q. In how many places did you strike oil in West Tennessee?

A. We didn't drill for any.

Q. But you told them they had prospects of oil—advertised that they did?

A. No, sir.

Q. Got any coal mines around West Tennessee?

A. We were not seeking any, General McClanahan.

Q. If you had found it, you would have advertised it?

A. If we had known it was there, we would have been glad to have advertised it.

Q. Now, what was that that you told us about that God endowed; was that Natural or Potential?

A. As I understand—

Q. (interrupting) What are the Potential?

A. Things you possess as the Natural Resources. You can take a piece of iron and make a hammer—that is Potential.

Q. That is the natural and potential resources?

A. That is the way I express it.

Q. Is that the way Pierce expressed it?

A. I never heard him asked the question.

Q. You called on the farming people, mostly?

A. No, sir; all types of people.

Q. Mostly farmers and general merchants, out in the country?

A. Lawyers, Doctors, School-teachers.

Q. How many lawyers did you call on in West Tennessee?

A. I never kept account of them.

Q. You ought to know; you are making the statement that you called on lawyers.

A. My mind don't go into that. You possibly can re-

member better than I can.

Q. Your memory has been good on other things.

A. It has been good on things that didn't happen.

Q. What didn't happen?

A. His representing himself to be affiliated with the United States Government.

Q. You can remember that better than anyone else?

A. Absolutely.

Q. What else didn't happen that you can remember so well?

A. That is all, right now.

Q. You can remember that, and there is nothing else that you can recall, right now?

A. Oh, yes; I can recall other things.

Q. What others?

A. Several others.

Q. Go ahead and finish the conversation he was having with Col. Yancey.

A. As I remember, he was sitting in the front seat of the car, and he explained his proposition to him.

Q. What was the proposition?

A. To advertise the county—the Natural and Potential Resources; advocating Cheaper Power, Lower Taxes, and Better Roads.

Q. And for that Col. Yancey wrote him out a check for $150.00?

A. As I recall.

Q. That is what took place, and Col. Yancey was in a big hurry; or, do you remember?

A. I am inclined to think that he was in a big hurry.

Q. Why is it that you remember about Col. Yancey? You say you don't remember these other things.

A. His contribution was more substantial than the others.

Q. When it is a little bit more, you remember a little better; is that the way?

A. I should think so.

E. H. Roach

Q. In other words, you were much more interested in the contribution made, than—

A. (interrupting) No, sir; it didn't affect me, one way or the other.

Q. It has affected your memory; hasn't it, Mr. Roach, as you have testified?

A. I believe it would affect yours the same way.

Q. I am asking about yours.

A. It possibly did affect mine; yes, sir.

Q. Now, you say Mr. Pierce wrote the checks most of the time?

A. In most instances; yes, sir.

Q. Mr. Pierce carried pads on the different banks around there; didn't he, Mr. Roach?

A. Generally speaking; yes. sir.

Q. Every time they would sign a check and give it to him, he would give them a receipt?

A. Yes, sir.

Q. How would he hand them the receipt?

A. Tear it off like this.

Q. And hand it to him open?

A. Yes, sir.

Q. In every instance?

A. I don't recall any difference.

Q. Do you recall any difference?

A. I don't recall any that he folded, at all.

Q. He carried this postal card around with him?

A. It was usually in the car, or one of us had it.

Q. What was the purpose of carrying it; explain that to the jury?

A. I think it was in case, generally speaking, Mr. McClanahan. to identify himself.

Q. How did he identify himself with that?

A. It has a picture of his home on it.

Q. Can you find that home for me?

A. Yes, sir; I think so.

Q. That is his home, here? Home of J. E. Pierce.

Q. Now what else did he identify?

A. That office building there.

Q. Is that this Times Building; this fourteen-story building?

A. Yes, sir.

Q. Is that the Hotel Building; 12 stories?

A. Yes, sir.

Q. Hotel Russell Erskin?

A. Yes, sir.

Q. Why was it necessary to identify himself with this postal-card?

A. I don't know that it was necessary, Gen. McClanahan.

Q. But he did that?

A. In some instances.

Q. Stating that he was owner, or director, or builder of those?

A. No, sir; he said that he was a director of the Hotel. And, that he built the Times Building.

Q. And the home?

A. Was where he lived.

Q. And he stated several times that he was worth a million, or half-million; didn't he?

A. I don't recall his stating that he was worth a dime.

Q. But, he said that he was interested in all those things?

A. Yes, sir.

Q. Why did he need this, when he had this letter of introduction?

A. I don't know, sir.

Q. This letter of introduction, '*As a matter of information and identification, Mr. Pierce is* 53 *years of age,* 6 *feet tall, weighs* 196 *pounds on the average, prematurely gray, wears glasses, carries a cane, and while presenting a pleasing personality and stately appearance, he is modest and of a re-*

tiring disposition.' Did that state the facts about him, Mr. Roach?

A. General, I don't think that is a fair question. I don't know. He had grey hair, carried a cane, and I think I would probably say that he was stately.

Q. How about this: '*He is modest, and of a retiring disposition*'? Did he show any modesty around any of those contributors that he visited?

A. Well, I don't think he was egotistical, General.

Q. You don't think so?

A. No, sir.

Q. Was he modest?

A. I don't know, General.

Q. You are in position to know.

A. I am not the best judge of human nature. I might say you are modest and be mistaken.

Q. Well, you would be mistaken. '*And of a retiring disposition*'? Was he of a retiring disposition?

A. I don't know, General.

Q. What?

A. I don't know, sir.

Q. You have been with him since 1934?

A. Yes, sir.

Q. Have you ever seen him in a retiring disposition?

A. I don't know, General.

Q. You have seen him jump out of the car and say, 'Hello, Bill'! 'Hello, John!'

A. I have seen him talking to different people.

Q. And he knew more about those people than they knew themselves; didn't he?

A. No, sir; I shouldn't think so, General.

Q. He inquired about them?

A. Yes, sir; usually got as much information as he could.

Q. He would jump out and say 'Hello, Bill', 'Hello, Tom', 'this is J. E. Pierce'; wouldn't he?

A. I don't recall, General.

Q. You recall most everything else; don't you recall he did?

A. He possibly did in some cases, Gen. McClanahan.

Q. In some cases?

A. Yes, sir.

Q. Do you recall when he called on Mr. Couch?

A. Yes, sir.

Q. What did he call him?

A. I couldn't say, positively.

Q. Did he call him Squire, or Uncle Bill?

A. I really couldn't say, General. I was present.

Q. What did he call Mr. Luckey?

A. I couidn't say positively as to that.

Q. What did he call Mr. Utley?

A. I wouldn't say positively about that, General.

Q. You are pretty positive about other things that you testified to.

A. Everything that I said.

Q. You said those particular instances were different from any others. What did he call Tom Anderson?

A. I don't recall.

Q. Who was with you when you went to see Mr. Couch?

A. Mr. Bob Ross.

Q. Where was Ross during the conversation?

A. On the front porch.

Q. Who else was on the front porch?

A. Mr. Pierce and Couch?

Q. What conversation took place between Pierce and Couch?

A. Just routine talk, trying to sell him some advertising.

Q. Tell us the conversation that took place between them that day?

A. I couldn't tell it, word for word; practically a canned sales talk.

Q. Just another one of those canned sales talks?

A. They were very much in line.

Q. Was there any variance in any of them?

A. Except what I told you about, General.

Q. Except as to Lawyers, Doctors and Bankers?

A. That is correct; yes, sir.

Q. Now, sometimes, I believe you said—on the first trial, Pierce was asked the question if he was a representative of the Government, and he invariably denied that he was. Was there ever any question asked him, that you recall, about stock, or about whether they were getting stock or bonds, or anything; was he ever asked if he was a representative of the Government at any time you were with him?

A. Asked if he was a representative?

Q. Yes.

A. Yes, numerous times.

Q. Numerous times?

A. Yes, sir.

Q. What was done or said by Pierce to create any such opinion?

A. I don't really know, sir. The only way I could account for it, Cheaper Power suggested TVA. It does, in numerous cases. You naturally think of Cheaper Power being affiliated with TVA.

Q. You know all about electricity, yourself; you are an experienced man in power; aren't you? You have been associated with Memphis Power and Light Co.?

A. In an office capacity; yes, sir.

Q. In an office capacity?

A. Yes, sir.

Q. You said that you had experience along that line and that you associated cheap power with TVA?

A. I did.

Q. That is what you said, isn't it?

A. Yes, sir.

Q. You have had experience in that?

A. Working with the company; yes, sir. Electric Companies—Distributing companies; yes, sir.

Q. You associated, yourself, cheaper power with TVA. Now, just what was said by Pierce about Cheaper Power, to make someone think that it was TVA?

A. He was just advocating Cheaper Power, Lower Taxes and Better Roads.

Q. Lower Taxes and Better Roads. They all went together, didn't they?

A. He was boosting and advocating these three things.

Q. Did you hear him tell Col. Yancey that he put TVA in Tupelo in four months time?

A. No, sir; I did not.

Q. You heard everything that he told Col. Yancey, didn't you?

A. I was in hearing distance.

Q. Well, you heard it; didn't you?

A. I think so; yes, sir.

Q. I believe you testified before that lots of times when anybody was in doubt about Mr. Pierce that you would suggest Mr. Pierce show them 'your credentials'?

A. I have suggested that.

Q. You have suggested tnat?

A. Yes, sir.

Q. Was there anything said, during any of the 'canned sales talks' by Mr. Pierce to any of the prospects about bringing in Cheaper Power?

A. No, sir; he was advocating it; boosting for it.

Q. Didn't he say he would help them bring it in there?

A. No, sir.

Q. Assist them in bringing it in there?

A. He might have told somebody in his opinion he thought advertising it and boosting it, and having Community Meetings would hasten it.

Q. Did you ever hear him mention TVA during your whole time with him?

A. In all sales talks, he referred to it, as his Muscle Shoals Development program.

Q. He didn't refer to it as TVA?

A. No, sir.

Q. But he did, quite often, refer to Muscle Shoals?

A. Yes, sir.

Q. I will ask you whether or not, on the first trial, this question was asked you and this answer made—

MR. GWINN: What page.

GEN. McCLANAHAN: I am reading from 221 of this transcript of the record here. I don't know what page it is in the other; I didn't take time to look it up. You have that transcript.

> *'Question: Was there anything said about Cheap Power in those sales talks? Answer: Yes, sir; invariably, if they asked about it he would say they were trying to develop—build up sentiment in favor of Cheaper Power, and that they might be able to help get it, and would like to.'?*

THE WITNESS: I would assume that is true; that was in line with his statement.

Q. Did you make that, or not?

A. I assume I did, if it is in the transcript.

Q. In any sales talks did you ever hear TVA mentioned?

A. Not in connection with his sales talk; no, sir.

Q. Where did you hear him mention TVA?

Q. Where did you ever hear him mention TVA?

Q. Yes.

A. I have heard him asked the question, say 'Why do you refer to Muscle Shoals, and then TVA? And he would say, 'It embraces a wider area.'

Q. The Muscle Shoals embraces a wider area than TVA?

A. Yes, sir.

Q. What is the difference between Muscle Shoals and TVA, and in what way would Muscle Shoals embrace a wider area than TVA?

A. I don't know.

Q. You have heard Mr. Pierce explain that?

A. No, sir.

Q. But you have heard somebody ask him why he didn't use TVA?

A. I wouldn't say that was the exact question; that was substantially the question.

Q. And he would say—?

A. He says, 'I always refer to it as Muscle Shoals Development Program, because it embraces a wider area.'

Q. He said he referred to it that way for that reason?

A. That is the way I recall it.

GEN. McCLANAHAN: That is all,"

REDIRECT EXAMINATION:

I testified at a magistrate's hearing at Alamo, Crockett County, Tennessee, and the Government witnesses, Dr. Conyers and Mr. Cherry were among those who testified. They were represented by counsel, Mr. Buck Avery, who represented the plaintiff's in civil suits brought in that County against Mr. Pierce. Mr. Pierce was represented by a Mr. German. The testimony was taken by Mr. Avery's secretary. I have never been able to see it and my counsel informed me that they were unable to obtain a copy of it.

"Q. With reference to that, there are two lines here which Mr. McClanahan has read to you, from page 772 of the transcript, in the first trial, and immediately following what he read to you I will ask you if this question appears and this answer: '*Question: Protection against what? Answer: Against any further trouble that might be worked up like that in Gibson County.*' If that is also shown on the transcript of your testimony on that page?

A. That is correct; yes, sir.

Q. Now, Mr. Roach, I want to ask you if you know what connection in your testimony at Alamo the question by Mr. McClanahan: '*You would go along with him and listen to what he said—for what? Answer: 'As a matter of my own protection as well as anything else.*' Do you know what proceeded that question, or what followed it? In other words, have you been able to get hold of a copy of the transcript?

A. No, sir; I have not. Never been able to see it.

Q. Now, Mr. Roach, Mr. McClanahan has made some inquiry about naming Doctors, Lawyers, Preachers, Bankers, etc., during the time you have been with Mr. Pierce. Have you called on few, or many, people during the time you have

been with him?

A. Several thousand.

Q. And have you made investigation, or heretofore been asked to make any investigation as to the names or professions of the folk on whom you called?

A. I never recall any such question before.

Q. You have made no such investigation?

A. No, sir.

Q. Did you keep a list of persons on whom you called?

A. I did not.

Q. Did you know them before you called on them?

A. Very few."

I have heard the Government witnesses, Mr. Kale H. Witt, Mr. Harris Utley, J. H. Simpson, Frank Blackman, Dr. Conyers, Carl Robinson, J. B. Cherry, Clarence Luckey and Mr. Anderson and Mr. Shoaf testify on several occasions. I did not hear the testimony of Mr. Couch. I have heretofore testified twice in this Court and once at Alamo. The first trial I believe started December 12, 1935. I think I heard these Government witnesses state, without exception, that they read over their testimony given at the first trial. I did not do this because our copy had been lost or misplaced. I stated to Gen. McClanahan that I was loyal to my employer. There was nothing in my contract of employment that required me to testify in behalf of him in Court. That was never mentioned. In my testimony today and in the first trial, I have tried to that the facts. I had never had any experience in advertising before I entered the services of Mr. Pierce and did not claim to be an expert in that line. I was present at the transactions between Mr. Pierce and the Government witnesses who testified in this case and in every one of these transactions a demonstration was made with the newspaper as I have detailed in here.

RE-CROSS EXAMINATION:

I still have not had any experience in advertising. I am employed by Mr. Pierce, who is in the advertising business. I do not at present attend every sale he makes. I did in Mis-

sissippi and Arkansas. I did not try to acquire any experience in Tennessee in advertising. I do not have to have a transcript to remember what I said in my testimony in other trials. It made no difference about me not seeing it and the fact that I do not have a copy made no difference in my testimony. I stated on direct examination that Mr. Pierce made the same talk all the way through except as to the difference as to bankers, lawyers, etc.

MR. GWINN: Your Honor, I would like to ask that the Jury retire.

THE COURT: Gentlemen, you may retire a moment.

Here the Jury retired, and the following occurred in their absence:

MR. GWINN: I am not going to take up any time, except to state a brief Motion I want to make at the present time.

If you Honor please, the Defendant moves for a mistrial on account of the character of cross-examination of the witness Roach—extraneous matters; attempting to hold him up to ridicule, and things of that kind by the District Attorney.

THE COURT: Motion overruled.

MR. GWINN: Note our exception, Mr. Boulware.

THE COURT: No, the Court notes it. Don't address the court reporter. The Court notes the exception. It still prevails that way—the reporter has no right to note an exception unless the Court directs it.

MR. GWINN: May I ask you Honor a question for information? In the State practice don't they ask the stenographer to note an exception?

THE COURT: No, they say, "Your Honor, may I note my exception?"

THE COURT: You may note an exception.

Here the jury returned to the court-room, and the trial of the case was resumed in their presences, as follows:

THE COURT: As I understand it, Brother Gwinn, has completed the oral testimony, and he is now going to read to you the testimony of witnesses at the former trial, which will be received in evidence for the same purpose as if the

witness had testified, personally in court before you.

GEN. McCLANAHAN: We stipulated about this transcript the other day—the one taken at Medina; we stipulated that the certificate of this young lady who took that—went further and stipulated it and had it in there that this was taken to the best of her ability. That was not stated in the certificate.

THE COURT: I think all any of us can state, on taking office, is that we will perform to the best of our ability and understanding. I think we are all limited by our ability.

MR. GWINN: The stipulation will prevent bringing the stenographer here from Trenton and is to be read into the record. And, I am going to read the certificate.

It was thereupon stipulated that the eMdina testimony, taken and transcribed by Miss———, employed by Robert Adams, attorney for the defendant at said hearing, that she has had several years experience in reporting cases in State and Federal Courts and if summoned as a witness will testify that she correctly took and transcribed such testimony; and that on cross examination she will admit that there was a possibility of errors on her part.

MR. GWINN: First turn to pages 6 and 7 (of Medina transcript). I suppose that numbering is the same.

GEN. McCLANAHAN: 6. All right.

MR. GWINN: At the bottom of page 7, referring to meeting with Mr. Pierce: Question 20 (asked the witness Joe Luckey at Medina) "Called you what? Answer: Mr. Joe, how are you. When I looked up I said that must be Judge Baptist over here. I thought it was him until he got a little closer. The closer he got, I seen I hadn't met the man, and he was talking, and he came on and introduced him to me as Mr. Pierce."

The next is the testimony of Joe Luckey, on page 11, Cross-Examination—Question: 1: You didn't look at your receipt? Answer: No, sir. Understand me, I knew it was a paper receipt. Question: You knew it was a paper receipt, because it says 'I am giving you a paper' Answer: Yes, sir."

Medina Testimony

And, the next is from the examination of the witness Frank Blackman, on page 30, Cross-Examination, question 1, on page 30 "What did he say about Muscle Shoals? Answer: He said he was working in the interest—Question: Of Muscle Shoals project? Answer: Yes, sir.

GEN. McCLANAHANff What is the next one?

MR. GWINN: And question 14, on page 31, "He showed you a copy of the newspaper that went out to Weakley County? Answer: Yes, sir. Question: And that had the advertisement of different farms, and different people in the Community? "Answer: I don't know. I saw the headlines. He was going through pretty fast."

And, the next is Kale H. Witt, page 34: "Question: 14, on that page: What did he (referring to Pierce) Say about the United States Government? Tell anything about that? Answer: Well, I don't remember him saying anything about that.

GEN. McCLANAHAN: What page was that?

MR. GWINN: Page 14.

MR. GWINN: And then, on page 36: to the same witness —beginning with the first question of his cross-examination, on page 36: Mr. Witt, Mr. Pierce did the talk[illegible] didn't he? Answer: Yes, sir. Question: He told you he [illegible]utting on a program for the development of the Natura[illegible]l Potential Resources of the Community; didn't he? Answer: Yes, sir. Question: And that that originated in Muscle Shoals; didn't he? Answer: I think so. Question: And that he was seeing the people in the different communities, so as to further their plan and urge the immediate development; didn't he? Answer: Yes, sir. Question: And, he also told you that he had seen Squire Robinson? Answer: I don't remember about that. I noticed from the book he had two Luckey brothers; Joe and Clarence Luckey. Question: He told you that you would get a paper for five months; didn't he, daily and Sunday? Answer: I don't remember whether he said how long. I noticed on my receipt "five months". Question: He showed you what the work consisted of; and, the character and kind of

publicity given to this; didn't he—show you newspaper cuttings? Answer: Yes, sir. Question: Where he worked these counties out there? Answer: Yes, sir."

The next is from the testimony of John H. Simpson, on page 58, on cross-examination: "Question: Mr. Simpson, Mr. Pierce wrote the paper; didn't he? This gentleman here? Answer: Yes, sir. Question: He is the one that did the talking to you? Answer: Yes, sir. Question: Isn't this what he said to you—that he was interested in the development of the Natural and Potential Resources of the Community in which he lived. He told you that; didn't he? Answer: Yes, sir. Question: And he was putting on a program to help get Muscle Shoals Power through this community? Answer: Yes, sir. Question: And he showed you a full page of newspaper he carried, people's names, and advertising of farms and things for sale, and other things; didn't he? Answer: Well, he showed me newspapers and turned over different things; I don't know just what that was."

Then Question 13, beginning with question 12, on page 59: "Question: He said that would carry the names of every person in the Community who joined the enterprise? Answer: I wouldn't say whether he did, or did not." Question: And, that the Community, to carry out the plan, took $2400.00? Answer: I don't know how much he told him. Question: To refresh your memory, the Community would put up $1400.00, and that the concern with which he was connected would put up the balance? Answer: Would put up dollar for dollar, whatever we put up. Question: In the Community? Answer: Well, yes, the others would put up the other."

And, Clarence Luckey, on page 61. 62 instead of 61. Question 11, on page 62: "What did he want you to do? Answer: Wanted me to put some money in, as much as I could. Question: How much did he want? Answer: He wanted $50.00 to begin with ,and I told him him "no". Question: What did he say to that? Answer: He called it a unit, if I understood it right; $10.00 a unit. Question: Did he say anything about any advertising or Publicity? Answer: He pulled out a news-

paper and talked something about some kind of advertising; yes, sir." And, on the cross-examination:

GEN. McCLANAHAN: Read questions 15 and 16.

MR. GWINN: All right; I will do that, while it is no part of the question asked him: "Did he propose to sell you advertising? Answer: I don't think so; no, sir. Question: Did you buy some? Answer: I spent ten dollars on it. Question: You bought a unit? Answer: I bought something." Is that what you want read?

GEN. McCLANAHAN: Yes.

MR. GWINN: Now, on cross-examination, on page 63, beginning with question one, on the cross-examination of Mr. Simpson: "He told you that his purpose was he was interested in the development of the Natural and Potential Resources of your community; didn't he? And, that they wanted to extend Muscle Shoals Power—electricity—down through your community? Answer: Yes, sir. Question: And, he also told you that the program that they had on had been extended to work in all West Tennessee Counties? Answer: Yes, sir."

MR. GWINN: That is all.

MR. GWINN: Those, if your Honor remembers, were the questions pointed out to the witness, and they either said they didn't remember, or—

THE COURT: I recall.

MR. GWINN: Defendant rests.

MR. GWINN: I am going to ask that the Jury retire, on that.

THE COURT: Before he comes or after he comes on?

GEN. McCLANAHAN: I won't call him then.

MR. GWINN: We are going to have an argument, and I don't want—

THE COURT: Let the Jury go to the Jury Room.

Here the Jury retired and the following occurred in their absence.

MR. GWINN: I gather from the Disetrict Attorney, if your Honor please, that he intends to go into this— prove

by this witness statements that were made to him by Mr. Pierce, in the conduct of his campaign, and those are matters in chief, if I understand the purpose of the inquiry.

THE COURT: Of course, I don't know what is all about. What witness are you calling for, General?

GEN. McCLANAHAN: You will remember the witness for the Government, who was a Deputy Sheriff from Dyer County, stated that he accompanied him when he made this sale to Capt. Yancey, and undertook to tell what the sale was; had nothing to do with TVA in any shape, form or fashion; that it was Good Roads, Lower Taxes and Cheaper Power; and that nothing was said about TVA in the whole transaction.

THE COURT: You are referring to a witness introduced by the Defendant?

GEN. McCLANAHAN: By the Defendant.

THE COURT: And you want to rebut by this witness the testimony of that witness?

GEN. McCLANAHAN: That and Mr. Roach.

THE COURT: What is your objection?

MR. GWINN: If your Honor please, in both instances, as to Mr. Yancey, there was no proof, no examination and no reference by the defendant, or any of his witnesses to anything that was said to Capt. Yancey, and that was brought out on cross-examination of counsel for the Government; and, having gone into that, they are bound by it.

GEN. McCLANAHAN: If your Honor please, I recall the defendant, Pierce, went in and talked to Col. Yancey, himself, and about the sale that he had with Col. Yancey, about contributing $150.00, and that the check was stopped.

MR. GWINN: That was on the first trial; not on this.

GEN. McCLANAHAN: On this trial, yesterday. I think if you will get the Court Reporter to read it you will see.

THE COURT: Well, since there is an objection made and this is in rebuttal, and it goes to more than one of many instances described by various witnesses here, I will exclude it, on objection of Defendant.

GEN. McCLANAHAN: It is offered only for impeachment purposes.

THE COURT: On rebuttal, that rule is very limited, and I wouldn't care to take a chance of reversal in case of a conviction. Call in the Jury.

Here the Jury returns, and the following occurs in their presence and hearing.

THE COURT: All right. Gentlemen, is there anything further for the Government?

GEN. McCLANAHAN: The Government Rests, your Honor.

THIS WAS ALL THE EVIDENCE IN THE CASE.

THE COURT: (To the Jury) Gentlemen, you may retire to the Jury Room, if you please.

Here the Jury retired, and the following occurred in their absence and out of their hearing:

MR. GWINN: I suppose your Honor anticipates—

THE COURT: I wanted to give you an opportunity for making any motion;

MR. GWINN: May I state it to the Court Reporter?

THE COURT: Yes.

MR. GWINN: Comes the defendant, J. E .Pierce, and moves the court to instruct the Jury to return a verdict of Not Guilty on each and all of the counts of the Indictment for the following reasons, to-wit:

First, There is no evidence to support a verdict;

Second, The evidence, when considered as a whole, is as consistent with the innocence as with the guilt of the defendant; and, therefore, does not warrant submission of the case to the Jury;

Third, As to the counts based on the first provision of Section 32, Title 18, U. S. Code Sec. 76 of the Criminal Code, and which makes it an offense for any person with intent to defraud, falsely to assume or pretend to be an Officer or Employee acting under the authority of the United States or any Department or any officer of the Government thereof and who shall take upon himself to act as such."

There is neither allegation in the indictment, nor evidence of any act on the part of the defendant, Pierce, as an Officer, or Employee of the Federal Government, and no evidence that the defendant, Pierce, officiated, or attempted to officiate as an officer or employee acting under the authority of the United States, or any Department or any officer of the Government thereof;

Fourth, As to counts based on the second division of said section 32 of the Criminal Code (18 USC Sec. 76) which makes it an offense for any person, with intent to defraud to demand or obtain any money, papers, documents, or other valuable things "while acting in a purported Federal Official character. There is neither allegation in these counts of the Indictment, nor evidence that the defendant, J. E. Pierce, demanded or obtained anything of value by reason of false personation of an employe, or officer of the United States Government, or any department or officer thereof;

Fifth, The Tennessee Valley Authority, while an instrumentality of the Government, is a corporate entity, separate and distinct from the Government, so that employees thereof are not Officers or employees of the Federal Government or any Department thereof, so as to come within the purview of Sec. 32 of the Criminal Code; and, consequently, any claim that the defendant, Pierce, was connected with the TVA, or representing the TVA would not constitute a false personation under Sec. 32 of the Criminal Code;

Sixth, The undisputed evidence shows that in each and every transaction complained of in any count of the indictment the person from whom funds were obtained was given a receipt therefor, this showing that the money was received, not in a Federal Official character, but as Publisher of a newspaper, and even though the evidence should be susceptible of the interpretation that the defendant claimed to be selling TVA Units, such a representation, in the face of the fact that each person named in any count of the indictment had at hand the means of detecting the falsity, would not

constitute a false pretense within the meaning of the Federal Statute;

Seventh, There is no evidence of any overt act which is an essential element of both of the offenses denounced by Section 32 of the Criminal Code, and the mere representation, or claiming to be an Federal Official would not constitute a violation of that Statute.

I believe those are the grounds, in substance.

THE COURT: All right. Motion overruled.

MR. GWINN: Note our exception.

THE COURT: Your exception is noted.

THE COURT: Now, about your Specials, if you will make your motion for the same special instructions that you made the last time I will make the same ruling on them, note an exception to any that are refused and include all that are granted.

MR. GWINN: I prepared some additional, that were not tendered before. I will be glad to give those to the Court in the morning.

THE COURT: Have you them now?

MR. GWINN: I don't believe I have.

Thereupon adjournment was taken until 9:30 AM, Friday, May 12, when the trial of the case was resumed as follows:

THE COURT: Make this for the record, Mr. Boulware:

The Court allows the exception of the defendant to the granting of all special requests of the Government which are allowed by the Court; and

The Court allows an exception to the defendant to the refusal of all special requests offered by defendant and declined by the Court.

THE COURT: Now, General, I am granting you the same special requests that you asked for on the trial before—the last trial.

THE COURT: Let's call the Jury in.

Here the Jury returned and the trial of the case was resumed in their presence and hearing, as follows:

Thereupon counsel for the Government and counsel for the defendant proceeded to argue, in turn, the case to the Court and Jury, at the conclusion of the argument the Court Charging the Jury orally as hereinafter set out in the Charge of the Court to the Jury.

CHARGE OF THE COURT TO THE JURY.

(By Judge Martin.)

Gentlemen of the Jury:

This has been an arduous trial. You have been here for five days. You have heard thirty-five witnesses testify, and you have followed this testimony with manifest careful attention and consideration. The Court thanks you for this service. And you know, from previous charges that have been delivered to you at this term, how much confidence the Judge of the Court in which you are now sitting has in you in your important capacity as Jurors in this case. Upon you rests the Constitutional guaranty of a fair trial to a person accused of a crime. It is your duty, of course, to weigh carefully deliberately and considerately the proof adduced before you, and to find the facts in this case. It likewise is, of course, your duty to receive the law as charged to you by the Court.

You have heard the attorneys discuss the law of this case. That, of course, was their privilege; and, the Court has aided them by indicating in advance of their argument the charge that he would deliver to you.

The Charge of the Court, in the material portions of it dealing with the law of the case, has been accessible to both the Government's attorney and the Defendant's attorney. That is a wise practice—a fair practice, to let the lawyers

have an opportunity of knowing what the Court's Charge will be.

Now, gentlemen of the Jury, this defendant, J. E. Pierce, has been indicted by the Grand Jury of this District on a fifteen-count indictment, charging the violation of Title 18, Sec. 76, of the United States Code. There were more counts in the indictment, originally. There are fifteen, now, left for determination by you. That is the number upon which you will find your verdict, as to the guilt or innocence of this defendant, J. E. Pierce, on each count of the indictment.

The Statute which he is charged with having violated in each of these fifteen counts is Title 18, Sec. 76, of the United States Code, which provides:

"Whoever, with intent to defraud either the United States or any person shall falsely assume or pretend to be an officer or employee, acting under the authority of the United States, or any department, or any officer of the Government thereof and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States or any department, or any officer of the government thereof, any money, paper, document or other valuable thing, shall be fined not more than $1,000.00 or imprisoned not more than three years, or both."

The Court directs your attention to another statute of the United States which provides that,

"Whoever directly commits any act constituting an offense defined in any law of the United States; or, aids, abets, counsels, commands, induces or procures its commission is a principal."

Gentlemen of the Jury, the defendant has pleaded "Not Guilty" to the charges against him. He has pleaded not guilty to each and every count of the indictment. And his guilt or innocence on each count of the indictment is a separate issue of fact for trial by you, gentlemen, on your oaths as Jurors.

It is the duty of this jury to enter upon the consideration of this case with the presumption that the defendant is not

guilty of any crime or offense; and, this presumption stands for him until it is rebutted and overcome by competent, credible testimony to your satisfaction beyond a reasonable doubt.

Reasonable Doubt, gentlemen of the Jury, does not mean any doubt which may possibly arise in the minds of the jury; but, it does mean a doubt engendered by a full consideration of the proof in the case and an inability after making such investigation of the proof in the case and consideration of it, to let the mind rest easily upon the certainty of the guilt of the defendant; and, this certainty of the guilt of the defendant is required as to every proposition of proof which is requisite to constitute the statutory offense charged.

The law does not demand absolute certainty to convict in a criminal case, but it does require moral certainty. And, moral certainty is required as to every proposition of proof requisite to constitute the offense; and, to repeat, gentlemen of the jury, the proof must be so convincing of the guilt of the defendant that the minds of the jury rest easily upon the certainty of such guilt before the jury could properly convict the defendant in a criminal case.

You jurors, of course, should render an absolutely fair and impartial verdict, and permit neither sympathy nor prejudice to enter into your consideration.

The jury has the exclusive and sole jurisdiction of the facts of the case.

Gentlemen of the Jury, in United States courts, the District Judges, or trial judges, are permitted, within proper bounds, to express some opinion about the facts of the case. That is a privilege that this particular judge who is now charging you has never exercised. So jealously does he guard the jury system, as he conceives it, in the genius of the framers of our constitution, as having been intended to be construed and applied, that he does not attempt to express any opinion about the facts of the case, or to make any comment on the testimony of the witnesses in the case for fear by such expression he may invade your province, and thereby deprive the defendant of that trial by jury which the Constitution

of the United States in the Bill of Rights guarantees him. That makes it, therefore, gentlemen, highly incumbent upon the jury to give the most careful consideration to the testimony before them. The facts are entirely your province, and it is for you and you alone to say what witness is to be believed.

Without expressing any opinion concerning the facts, gentlemen of the jury, the Court should aid your consideration of the facts of this case by charging you certain well-recognized rules, long established in the jurisprudence of our courts, of benefit to juries in the performance of their duties; but, in addition to applying these practical, common-sense and just rules, the jurors are expected to bring to bear upon this investigation, in their efforts to detect falsehood and reveal truth, their experience and observations of life, and in weighing the statements of their fellow men use their sound, common sense, fair judgment and discretion in applying these rules concerning which the Court will now charge you:

Every witness is presumed, in law, to have sworn to the truth; but should there develop conflicts in the testimony of the witnesses, these conflicts should be reconciled, if the jury can do so consistent with reason; but, if the jury cannot reconcile the conflicts in the statements of the different witnesses, then the jury is so say who and what is to be believed.

You are the sole judges of the weight and credibility of the testimony of all witnesses; and, in determining the weight and credibility of the testimony of witnesses the jury should properly look to the proof, if any, of the general character of the witnesses; they should observe and consider the manner and the demeanor of the witness on the witness stand while testifying; they should bear in mind the interest or lack of interest which a witness has in the result of the case on trial; they should consider and weigh the reasonableness or unreasonableness, the probability or improbability, the consistency or inconsistency of the testimony of every witness.

Charge Of The Court To The Jury

The jury should consider the relationship, if any be shown, of a witness to a party to the case! should consider the motive of a witness to speak truthfully or swear falsely! and, of course, the jury should weigh the means a witness has of knowing what he is talking about; and, consider his willingness and opportunity to know whereof he speaks; and, if there is any bias or feeling shown by a witness the jury should consider that and, conversely, if no bias, prejudice or sympathy is shown by a witness the jury should also consider the lack of bias, prejudice and feeling on the part of the witness.

Now, gentlemen, the law recognizes several methods by which a witness may be impeached, or discredited; one is to show by witnesses that they know the general character of the assailed witness, and from that knowledge of his general character they would not believe him on oath in a Court of justice.

The most important method of impeachment, however, that has been recognized by jurists, lawyers and text-book writers, is by cross-examination. If a witness, on cross-examination, is involved in contradictions and discrepancies as to material facts stated by him, then he stands discredited, or impeached.

Immaterial discrepancies, or differences in the statement of a witness do not necessarily discredit or impeach him, unless you believe they result from wilful falsehood. Then, of course, the witness is discredited.

A witness may be impeached by involvement in moral turpitude.

Now, another method frequently employed—and it has bee nused in this case—is to attempt to show that the witness has, on a former occasion, made contradictory or inconsistent statements about material facts concerning which he testifies. Proof of such former or prior inconsistent or contradictory statements should be cautiously received by a jury, however, because the witness who is assailed may not have expressed himself accurately or fully on the former oc-

casion; and, the contradicting witness may not have remembered correctly, or understood exactly what was said on the former occasion. You, gentlemen, being the sole and exclusive judges of the weight and credibility of the testimony of the witnesses, are to say to what extent, if to any extent, any witness has been impeached. Should you find that a witness has been impeached by any of the processes which have been discussed, such witness should not be believed unless he is corroborated, and then only to the extent that he is corroborated by credible proof.

Gentlemen of the jury, the defendant is a competent witness in his own behalf and has the right to testify and his testimony is to be weighed just as you weigh the testimony of any other witness, except that you have a right to consider that the defendant has an interest in the result of the case.

If the defendant is shown to be a man of good character this stands as a witness for him, and is to be looked to and considered by the jury as a circumstance in his favor and allowed such weight as the jury regards it is entitled to receive.

Now, gentlemen of the jury, the Court is about to give you special instructions requested by the defendant, and at the outset the Court instructs you that you are to receive these special instructions as to the law just as you receive the instructions the court gives you on his own initiative. In other words, these instructions, which the Court grants, are as much the law of this case as anything else the Court has said to you, or will say to you, and must be received as such.

At the special request of the defendant, J. E. Pierce, the Court charges you again—that the statute under which these defendants are indicted provides as follows:

> "Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department or any officer of the government thereof, and shall take upon himself to act as such, or shall in such pretended character, de-

mand or obtain from any person or from the United States, or any department or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than $1,000.00 or imprisoned not more than three years, or both."

This statute does not attempt to punish any person for falsly assuming to be any of the officers named therein, but provides punishment for assuming and taking upon himself to act in any office or place of authority, and an overt act is an essential element of the offense charged in each count of the indictment in this case. The word "pretend," in the connection in which it is used in the statute, and in this indictment, in this case, means the putting forth of a false appearance of being an officer, or simulating, or feigning to be an officer; and, acting in such assumed capacity, or by reason of such pretended official character, obtaining money or other things of value. And, unless you find from the proof beyond a reasonable doubt, that this defendant assumed to act, and did act, in a pretended official capacity, then your verdict should be "Not Guilty".

The Court further charges you that the mere fact that any person named in any count in this indictment may have reached the conclusion that the defendant was an officer or employee of the United States Government, or any department thereof, would not justify a conviction or the returning of a verdict of "Guilty" under any count of the indictment unless the defendant, J. E. Pierce, actually and intentionally represented himself to be an officer or employee of the United States Government, or some department thereof, with the intent that the person from whom he was soliciting funds would believe that he was acting in an official capacity. And, if you have a reasonable doubt as to whether the defendant Pierce was acting in an assumed official capacity, and not in the capacity of a representative of a newspaper, then you should give him the benefit of that doubt and return a verdict of "Not Guilty" although you may be of the opinion that the person, in any count of the indictment, claiming to have been

defrauded may, in good faith, have believed that Pierce was acting in an official capacity. It is the words and acts of the defendant, not the conclusion of the witness, which is the criterion by which you are to determine whether the defendant, Pierce, took upon himself to act as an officer, or employee of the Federal Government, or some department thereof; or, in such pretended official character, obtained money or other things of value from any person named in any count of the indictment.

The Court further instructs you that Pierce would not be responsible for any conclusion on the part of any witness of the Government that he was impersonating a Federal Officer, unless such conclusion of the witness was based on words or acts of Pierce designed and intended to create such an impression or conclusion on the part of the witness.

And, further, at the request of the defendant, the Court instructs you that—

Before you would be warranted in returning a verdict of guilty it is necessary for the Government to prove beyond a reasonable doubt that the defendant, with the intent to defraud either the United States or any person, falsely assumed or pretended to be an officer or employee acting under authority of the United States; and, took upon himself to act as such or in the pretended character of an officer or employee, and acting under the authority of the United States, obtained or demanded money, papers, documents, or other valuable things. A false impersonation of an officer or employee, acting under the authority of the United States Government, is the gist of both offenses created by Title 18, Section 76, of the United States Code, which has been twice read to you.

The Court further instructs you that, if the Government has failed to prove to your satisfaction, beyond a reasonable doubt, such false impersonation of an officer or employee, acting under the authority of the United States Government, it would be your duty to acquit, although you may believe that from the evidence that a fraud was perpetrated upon the persons named in the indictment, and believe from the evi-

dence that they received nothing whatever of value as the result of the money they paid on account of the representation of the defendant.

The Court further instructs you that the general nature of any advertising plan or publicity program carried on by the defendant Pierce can only be considered by you as it sheds light upon the charge of falsely personating an officer or employee, acting under authority of the United States Government; or, the charge of falsely impersonating, with an attempt to defraud, such an officer or employee. Unless done in the pretended capacity of an officer or employee, acting under authority of the United States Government, the obtaining of money or property without giving value received, or any value, is not a violation of the Federal Statute upon which the indictment is based.

The Court instructs you that before you would be warranted in returning a verdict of "Guilty" under any count of the indictment it is necessary for the Government to establish beyond a reasonable doubt the commission of the particular offense charged in that count of the indictment.

The Court has admitted in behalf of the Government evidence of persons other than those named in the several counts of the indictment who have testified to transactions similar to those involved in the several counts of the indictment. The Court instructs you, however, that you would not be warranted in returning a verdict of "guilty" because you may find from the evidence that the defendant may have falsely impersonated an officer or employee of the Federal Government in transactions other than those involved in the several counts of the indictment; but, such evidence may be considered by you as it bears on the intent of the defendant in the commission of the particular offenses charged in the several counts of the indictment; and, unless you find and are satisfied from the proof, beyond a reasonable doubt, of the commission by the defendant of the particular offense charged in any count of the indictment, you would not be warranted in returning a verdict of guilty, although you should be sat-

isfied from the evidence that the defendant, in transactions with some person, not named in that count, falsely impersonated an officer or employee of the Federal Government.

In this connection, the Court instructs that you should consider each count separately; and, unless the evidence, establishes, beyond a reasonable doubt, the commission of the offense charged in that count, your verdict thereunder should be "Not Guilty."

And, again, at the request of the defendant the Court charges you that an intent to defraud is an essential element of both offenses created by Title 18, Sec. 76, of the United States Code, which has been read to you. But, an intent to defraud is only one of the offenses created by said Section of the Code, the gist of these offenses being, as heretofore stated to you, the false impersonation and assuming to act as an officer and employee of the United States Government or some department thereof, and the Court instructs you that the defendant is not being tried for obtaining property or money by false pretense, but for falsely impersonating officers or employees acting under the authority of the United States Government or some department thereof and in such pretended capacity obtaining funds from the several persons named in the indictment; and, unless he falsely impersonated an officer or employee of the Federal Government, you would not be warranted in returning a verdict of guilty, although you might be of the opinion that he obtained money or property by means of false representations. There must be a *concurrence* of a *fraudulent intent* and *false impersonation;* and, each of these elements must be established by the evidence beyond a reasonable doubt before you would be warranted in returning a verdict of guilty under any count of the indictment.

The Court further instructs you that, before a conviction is warranted, under any count of the indictment, it is not necessary that this intent be established by direct evidence. It may be inferred from circumstances; but, where circumstances are relied upon to establish a fraudulent intent, these cir-

cumstances must not only be consistent with guilt, but irreconciliable with innocence.

And, again, at the request of the defendant, the Court further charges the jury that evidence of what is frequently designated and has been referred to in the argument as extra judicial statements, meaning in this case oral statements made out of court, should be considered with caution, and especially so where such evidence is a material consideration in determining the guilt of the accused.

In this case the Government alleges that the defendant claimed or represented that he was an officer acting under the authority of the Government of the United States, and as such officer sold or attempted to sell TVA Units. It is not claimed that the defendant presented any badge, or other insignia of Federal authority; but, the Government contends that by oral statements the defendant, Pierce, claimed to be such an officer of the Federal Government, and took it upon himself to act as such, doing so with intent to defraud. The Government contending that such was done by oral representations.

If you find beyond a reasonable doubt that such were made, as alleged in the indictment, by the defendant Pierce, then it would be your duty to return a verdict of "Guilty". But, in consideration of such testimony the Court directs your attention to the many inherent infirmities incident to testimony concerning oral statements made out of court about which witnesses undertake to testify in court. Among such infirmities are,—the fallibility of human memory; the fact that declarants do not always express themselves clearly; the further fact that the hearer may not have fully understood what was said; and, the extent to which the entire meaning of an oral statement may be changed by the addition or omission of one or more words from the statement as actually made.

These are cautionary words on the part of the Court which you should consider in determining the weight that will be given to the testimony of the witnesses concerning state-

ments alleged to have been made by the defendant Pierce in his transactions with the several persons named in the indictment—witnesses who have testified in behalf of the Government.

At the request of the defendant the court further charges the jury that before you would be justified in returning a verdict of guilty against the defendant, Pierce, you must find, and be satisfied beyond a reasonable doubt, from the proof, that he intended to defraud; or, actually claimed to be an officer or employee acting under the authority of the United States Government, and in determining whether he made such claim, you should consider his transaction with the Government witness, involved in any particular count of the indictment, as a whole; and, consider not only the things he said but the things done, as a part of the transaction, including what was written on a check that may have been signed by the witness, or a receipt given by the defendant, Pierce, at the time the funds were obtained. The signing of a check, showing that it was given for advertising, is not conclusive evidence that it was given for that purpose, but the court instructs you that the impeachment of a written instrument by a person signing the sa. e requires conclusive and satisfactory evidence.

In this connection, the Court, further instructs you that the signing of a check, showing that it was given for advertising, by any witness who signed the check is prima facie evidence that it was given for the purpose stated; and, while it may be impeached by oral testimony, such testimony must be clear, cogent and convincing. In determining whether the check has been impeached, you should bear in mind the cautionary instructions heretofore given you concerning testimony in regard to oral statements or representations.

At the request of the defendant, the Court charges you that the claim, if such was made, by the defendant Pierce, that the work in which he was engaged, or the program he was conducting, would hasten the development, or extension of Cheaper Power in the counties canvassed by him; or, that

the funds obtained by him would be used to aid the counties, or particular localities, in obtaining cheaper power, would not, of itself, constitute a false claim of Federal Authority under the statute for the violation of which the defendant is being tried, even though you should find that such claim may not have been well founded. Nor, would a statement, by the defendant Pierce, if such was made by him, that he was working in the interest of the Government, or the TVA, of itself constitute a false pretense of being an officer or employee of the Federal Government, or some department thereof, as the statute does not preclude a citizen's aiding in the furtherance of a Government program.

At the further request of the defendant the court charges the jury that the claim or assertion of the person that he is working in the interest of the Government, or in furtherance of a Government program, is not, of itself, a false claim or assumption of Federal Authority.

In this connection the Court further instructs the jury that reference to the TVA in copies of the Huntsville Daily Register, exhibited by the defendant to any person, from whom funds were solicited, and in the sales talks made by him, to such person should not be considered by you as evidence of a false claim or pretense of Federal Authority on the part of the defendant, Pierce, unless you further find and are satisfied from the proof, beyond a reasonable doubt, that such reference to TVA, in either the newspapers or sales talks, were made by the defendant with the intent of producing a belief on the part of the person from whom funds were solicited that he, the defendant Pierce, was acting as an officer or employee of the Federal Government.

Now, at the request of the Government, the Court charges you, gentlemen of the jury, that verbal declarations may constitute a false pretending, or impersonation of a Government officer, within the meaning of the statute, equally with the exhibition of a counterfeit badge, or false certificate of authority.

The Court charges the jury further, at the request of the

Government, that the statute does not confine its prohibition to representations or pretenses which are sufficiently convincing to deceive only those persons least gullible, but the protection of the statute is broader than the mere protection of the credulous.

And finally, at the request of the Government, the Court instructs you that, under the Statute of the United States previously read to you, that

"Whoever directly commits any act constituting an offense defined in any law of the United States; or, aids, abets, counsels or commands, induces or procures its commission is a principal."

Gentlemen of the Jury, you will agree upon your verdict mutually, and not by any casting of lots, or other speculative practice or device. The verdict must be the mutual concurrent findings of each and every member of the jury, and must be based upon the law and the evidence.

The defendant has pleaded not guilty to all the counts of the indictment. The guilt or innocence of the defendant on each count of the indictment is a question to be tried and determined by you upon your oaths as jurors.

If you believe from the evidence to your satisfaction, beyond a reasonable doubt that the defendant, J. E. Pierce, is guilty as charged in any count in the indictment, it will be your duty to convict him upon such count of the indictment. You will, of course, return a verdict of guilty on all counts of the indictment upon which you believe from the evidence to your satisfaction beyond a reasonable doubt, that the defendant, J. E. Pierce, is guilty as charged.

If, from the evidence in the case, you have a reasonable doubt of the guilt of the defendant, J. E. Pierce, of the offense charged in any count of the indictment, it would be your duty to acquit the defendant on such count of the indictment.

Take this case, gentlemen of jury, give it full, fair and impartial consideration, and return such verdict as truth dictates and justice demands.

The form of the verdict will be found on the last page

of the indictment, to be filled in by you gentlemen, and signed by your foreman.

The Jury will now retire for consideration of the case.

THE COURT: Is there anything further?

MR. GWINN: Nothing.

Thereupon the jury retired to consider of their verdict.

At the conclusion of the Court's general charge appellant tendered in writing the following special request which was refused, exceptions being duly taken to such refusal. The request so submitted and refused is as follows:

> *"At the request of the defendant, the Court further instructs the jury that the Tennessee Valley Authority, commonly designated as TVA, although an instrumentality of the Federal Government, is a corporate entity, a separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the TVA as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, TVA officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment."*

The following exhibits were introduced and received in evidence on the trial of the case:

CHECKS:

Tom Anderson, dated March 26, 1935,
C. E. Luckey, dated May 21, 1935,
C. L. Shoaf, dated March 25, 1935,
Lewis Brothers, dated May 21, 1935,
D. J. Conyers, dated June 11, 1935,

Exhibits

J. B. Cherry, dated June 11, 1935,
Frank Blackman, dated May 22, 1935,
J. H. Simpson, dated May 21, 1935,
J. C. Hamlett, dated June 10, 1935,

and the following receipts executed by J. E. Pierce, Editor of the Huntsville Daily Register:

D. J. Conyers, dated June 11, 1935,
Harris H. Utley, dated May 21, 1935,
C. L. Shoaf, dated March 25, 1935,
J. B. Cherry, dated June 11, 1935,
J. H. Simpson, dated May 2, 1935.

Also the following:

Letter of identification of J. E. Pierce signed by the Huntsville Daily Register by William H. Pierce, dated April 21, 1934;

Certificate dated April 22, 1939, signed by Dalton Walker, Editor and Publisher of the Sheridan Headlight.

Certificate marked 23 and C-25-3 signed by J. H. Rountree, Director General of the United States Good Roads Association.

Circular issued by the Brinkley Argus, marked Exhibit 28-3.

Receipt to D. L. Hopper dated November 28, 1938.

Affidavit and document thereto attached of the "Best Ideas Service, etc. Bureau" sworn to November 29, 1935

Certified copy of House Resolution number 32 adopted by the House of Representatives of the State of Arkansas. This certificate being dated April 17, 1939.

Postal card folder marked exhibit 24 and also P. 6. showing buildings in and around Huntsville, Alabama.

Also divers and sundry copies of the Huntsville Daily Register introduced and received in evidence and a copy of the Albany Decatur Daily, Albany, Alabama, dated May 5, 1921. All of said newspapers were duly filed as a part of the record in this cause and will be sent to the Court of Appeals as part of the transcript.

IN THE UNITED STATES CIRCUIT COURT

OF APPEALS

FOR THE SIXTH CIRCUIT

J. E. PIERCE,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.
No. 8352

STIPULATION

In this cause it is stipulated by and between counsel for the Government and attorneys for the Appellant that the original exhibits be sent with the transcript of the record to the United States Circuit of Appeals for the Sixth Circuit, and that same need not be printed.

William McClanahan,
United States Attorney.

L. E. Gwinn,
Attorney for the Appellant.

Charge Of The Court To The Jury

Following the verdict of the jury and within the time allowed therefor by the rules of the Supreme Court, the defendant made and filed a written motion for a new trial. Which motion and the written affidavit in support thereof, filed at the hearing are incorporated by reference in and made part of this Bill of Exceptions. Upon the hearing, said motion was disallowed and overruled by the Court to which action the defendant duly accepted.

Counsel for appellant appeared in open Court on October 12, 1939, and within the time therefor allowed by an extension of time on the part of this Court and the further extension allowed by the Circuit Court of Appeals, upon stipulation of counsel for the Governmnet and for appellant, and presented this their Bill of Exceptions, accompanied by assignments of error.

Upon application of counsel for appellant, and being of the opinion that a proper understanding of the questions presented requires it, and by consent of counsel for the Government, the Court directs that parts of the foregoing testimony, set forth in the form of questions and answers, be so incorporated in the Bill of Exceptions.

And now, the appellant, J. E. Pierce, tenders and presents the foregoing bill of exceptions, containing all of the evidence and correctly showing all of the proceedings had in the trial of the case, and prays that the same may be settled and allowed, and signed and sealed by the Court, and made a part of this record, and the same is accordingly done, this 12th day of October, 1939.

John D. Martin
Judge.

Approved;
William McClanahan
United States Attorney
Approved:
L. E. Gwinn
Attorney for appellant, J. E. Pierce

MOTION FOR A NEW TRIAL

Filed May 17th, 1939.

In this cause comes the defendant and moves the court to set aside the verdict of the jury and grant defendant a new trial and as grounds of said motion defendant states and shows to the court as follows:

I.

There is no substantial evidence to support a verdict of guilty under any count in the indictment.

II.

The court erred in overruling defendant's motion for a directed verdict, made at the close of all the evidence in the case. This was error in that:

(a)

No witness, testifying to a transaction involved in any count on which a verdict of guilty was returned, states any facts or circumstances showing or tending to show that defendant falsely assumed or pretended to be an "officer or employe, acting under the authority of the United States."

(b)

There was no evidence showing or tending to show that defendant obtained any money or things of value from any witness for the Government testifying to a transaction involved in any count in the indictment, in a "pretended character" of an "officer or employee, acting under the authority of the United States", etc. But the undisputed evidence relating to each count shows that defendant obtained money or checks as a newspaper publisher; and that he then and there gave the witness a receipt, executed by him as a newspaper editor, showing the capacity in which he received the funds and the execution of this receipt was not an overt act

in keeping with any claim of federal authority, but as a strictly private act on the part of the editor of a newspaper, the receipt so showing on its face.

(c)

The claim by the defendant, if made, that he was a representative of the Government, acting in furtherance of its Power Program, was not an impersonation of an "officer or employee, acting under the authority of the United States". But if it could be so construed, there is no evidence on an overt act on the part of the defendant in keeping with the pretense that he was an "officer" or "employee", acting under the authority of the United States Government.

III.

The defendant was denied a fair and impartial trial in that the District Attorney persistently and consistently sought to convey to the jury the impression that defendant, by means of bogus and worthless advertising, cheated and defrauded Government witnesses and others of their funds, this being done to such an extent as to obscure the issue of false impersonation presented by the indictment and to an extent that the resulting prejudice was not corrected by the instructions of the court.

IV.

The defendant was denied a fair and impartial trial in that the examination and cross examination of witnesses by the District Attorney and his arguments were sa conducted as to make the defendant an object of scorn and ridicule to the jury and divert its attention from the issuesc presented by the several counts of the indictment.

V.

The court erred in overruling defendant's motion for a mistrial, made at the conclusion of the cross examination of the defendant's witness, E. H. Roach. This was error in that the cumulative effect of the errors theretofore committed,

including the unfair and prejudicial cross examination of this witness, combined to deprive the defendant of a fair trial on the particular offenses charged in the several counts of the indictment.

VI..

The court erred in overruling defendant's special request number 1, which is as follows:

"Request No. 1.

"At the request of the defendant, the court further instructs the Jury that the Tennessee Valley Authority, commonly designated as T.V.A., although an instrumentality of the Federal Government, is a corporate entity, separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if [illegible] or representation was made, that he was representing the T.V.A., or was connected with the T.V.A. as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, T.V.A. officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment".

This was error for the following reasons:

(a) The offenses alleged in the indictment and sought to be proven, if committed at all, were committed in May and June, 1935.

(b) The impersonation of an officer or employee of the Tennessee Valley Authority, if defendant impersonated such officers or employees, or claimed to be a representative of the T.V.A., was not within the scope of section 32 of the Criminal Code (U.S.C.A. Title 18, Sec. 76) until the amendment thereof on February 28th, 1938, which amendment was adopted approximately three years after the commission of

the alleged offenses for which defendant was tried and convicted. Said section as it now reads with the February 28th, 1938 amendment thereof underscored, is as follows:

> "76. (*Criminal Code, Section* 32) *Falsely pretending to be United States Officer.*
>
> *Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department or any office of the government thereof, OR UNDER THE AUTHORITY OF ANY CORPORATION OWNED OR CONTROLLED BY THE UNITED STATES, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States or any department thereof, or any officer of the Government thereof, or any corporation owned or controlled by the United States, any money, paper document, or other valuable thing, shall be fined not more than* $1,000 *or imprisoned not more than three years, or both. As amended Feb.* 28, 1938, *c.* 37, 52 *Stat.* 83."

(c) In the absence of the foregoing instruction or a specific instruction on the point therein presented the jury were given no guide to distinguish between the legal effect of representation, if any, that defendant claimed to represent the Federal Government, and representations, if such were made, that he was connected with or represented the T.V.A. and was selling T.V.A. units. And in view of the blending of the evidence as to such alleged representations concerning the Government and the T.V.A., the instruction requested was necessary to a clarification of the issues and a restriction thereof to offenses within the scope of section 32 of the Criminal Code as it existed at the time of the commission of the offenses charged in the indictment.

Wherefore by reason of the errors aforesaid and others appearing in the record, defendant prays that the verdict of the jury be set aside and defendant granted a new trial.

L. E. Gwinn, Atty.

AFFIDAVIT OF J. E. PIERCE

Filed May 27th, 1939.

STATE OF TENNESSEE
COUNTY OF SHELBY

The undersigned, J. E. Pierce, in the case of the United States of America vs. J. E. Pierce, states that during the three trials of the case it has been the theory of the Government, as understood by affiant, that the Tennessee Valley Authority or the TVA was an arm of the Government and that any claim or pretense of being an officer or employe or a representative of the TVA was a violation of Section 32 of the United States Criminal Code which prohibits the impersonation of officers or employes of the United States Government.

As affiant recalls the testimony of Government witnesses involved in counts of the indictment, none of them in the trial in which he was convicted testified that he claimed to be an "officer" of the United States Government, but some of them stated that he claimed to be a representative of the Government or working in the interest of the Government, selling TVA units, while others stated that he claimed to be a representative of or working in the interest of TVA. If the witnesses made any distinction between a representative of the Government and a representative of the TVA, such was not understood by affiant. The reason why no such distinction was drawn is to some extent indicated by the following excerpt from the testimony of the Government witness Carl Robinson on the second trial, this testimony dealing with a variance between his testimony in the first trial and the second trial of this case, such testimony being as follows:

Q. And naturally it was fresher in your mind then (2 years ago) than it is now?

A. Yes, sir.

Q. Now in your answer that I have read two or three times, you left out the word "Government". In answer to a

(Exhibit 1)

question by Mr. McClanahan on direct examination today, you included the word "Government". What is the reason for that variance in your testimony, Mr. Robinson?

A. The reason why I put in the Government was that he was selling TVA and I knew that was a Government project.

The record in the third trial of the case in which petitioner was convicted the second time, has not been transcribed, but as affiant recalls it, the testimony of Government witnesses who testified in regard to transactions involved in the indictment was substantially the same on both trials. In connection with the argument in the second trial, certain parts of the testimony of witnesses involved in the indictment were written up by the Court reporter and furnished counsel for the defendant. These extracts are made exhibits to this affidavit and numbered 1 to 8 inclusive.

J. E. Pierce

Subscribed and sworn to before me this 27th day of May, 1939.

Brooks Blaisdell
Deputy Clerk (seal)

(Exhibit 1)

MR. CALE H. WITT'S testimony (n 118)

Q. Now, Mr. Witt, I am going to ask you, in your own way, to take your time and state to the court and jury the best that you can remember, of your own knowledge, what was the conversation that took place between you and Mr. Pierce and Mr. Roach, if any? Just tell us exactly what happened.

A. I don't know whether I could, exactly—in the words.

Q. Well, the best you can, of course; your memory of it.

A. Well, he first complimented me on my farm, that I had a nice place; how uld I like to have TVA through there? I told him it would be mighty nice. He asked me if he could sell me some TVA units; that is what he called it. I didn't know what he meant. I told him "No". I didn't have much money that time of year; couldn't take any. He said it was within reach of everybody. He said "only ten dollars a

(Exhibit 1)

unit". Well, I studied a little, there, and he handed out a day book, or memorandum book of some kind. I noticed my neighbors, a lot of them's names on there—good friends. I told him I believed I would take a unit. I told him I would take a unit. He insisted on me taking one for my wife, taking two, but I didn't do it; I took one unit.

Q. All right, go ahead.

A. And he made out a check and I signed it.

THE COURT: What Mr. McClanahan wants to know, Mr. Witt is what Mr. Pierce or Mr. Roach, either one of them or both, said when they approached you as to whom they were representing, if anything?

A. Well, I couldn't say that they were representing the Government in this matter. They said what money I invested in this the Government would match it. I took it for granted.

Q. Don't tell what you took for granted.

THE COURT: Let me explain, Mr. Witt, the Government doesn't want you to state any opinion testimony, and the Court would not permit any of your conclusions; what we want to know is what Mr. Pierce said, or Mr. Roach said, and about any representations in their statements.

THE WITNESS: I think that is about all that was said. About whatever I had invested, the Government would match it.

Q. Who stated that to you?

A. Mr. Pierce.

Q. Just tell us what Mr. Pierce stated to you about that?

A. He said we had a mighty fine country there, and we would have TVA there in a short while if we would get up enough money to do it; we would have to get up some to match the Government in putting it through.

Q. Match the Government?

A. Yes, sir. Of course, that has been a good long while. It may be I haven't got this just like it happened, every word.

Q. But you are giving it to the very best of your recollection?

A. Yes, sir.

(Exhibit 1)

MR. McCLANAHAN: That is all.

THE COURT: We have now reached the lunch recess hour. We will go for an hour and a half, as usual, and come back at 2:30.

Thereupon an adjournment was taken until 2:30 P.M. when the trial was resumed as follows:

CROSS EXAMINATION, by Mr. Webster:

Q. Mr. Witt, I understand you said on cross-examination Roach didn't say a single word in your presence.

A. No, sir; he didn't say anything that I remember, at all.

Q. Nobody introduced him as a representative of the U. S. Government, or as an official of the U. S Government?

A. No, sir.

(n 131)

Q. What did he say (referring to Pierce)

A. He said all I put in the Government would match it; if I put up a dollar, they would put up a dollar to match it.

THE COURT: That answers the question.

Q. Now, Mr. Witt, the question I asked—

THE COURT: (Interrupting) I think he answered the question you asked.

MR. GWINN: I asked this question, your Honor.

THE COURT: I ruled that he answered your question. Ask another.

MR. GWINN: All right. We note an exception, your Honor.

Q. Mr. Witt, you testified at Medina when this matter was much fresher in your mind than it is now; didn't you?

A. Yes, sir.

Q. (Referring to testimony given at Medina) Now, here is the question I want to ask you, Mr. Witt; I want to ask you if, in your examination there, if you were not asked this question; and, if you didn't make this answer; *'Question fourteen, and answer thereto: On your cross-examination, and at the Medina hearing: "What did he (referring to Mr. Pierce) say about the United States Government—tell anything about*

(Exhibit 1)

that?" "A. Well, I don't remember him saying anything about that." Were you asked that question, and did you make that answer?

A. He didn't say anything about the Government—only that the Government would match my money. He didn't say anything about the Government doing anything — in that way.

Q. So, he never made any claim to you at any time in your conversation there that he was representing the Government, except that they would match your contribution?

A. Yes, sir.

Q. Now, Mr. Witt, did he explain to you what the cost was of wanting to have these series of advertisements like had been put on in other counties; tell you how much it would cost?

A. Not that I remember.

Q. And you would not say whether he said "his company" or "they" or "he" or "the people he was working for" or the "Government" would match that amount; you would not undertake to repeat it.

A. I wouldn't undertake to repeat the exact language.

MR. McCLANAHAN: He has not finished.

THE COURT: He said he couldn't swear in the exact language.

THE WITNESS: I couldn't use his exact words.

GEN. McCLANAHAN: You undertook to answer—

THE COURT: (Interrupting) Question him further, if you want to, General.

BY MR. McCLANAHAN:

Q. Are you through with him, Mr. Gwinn?

THE COURT: He has passed him.

MR. WEBSTER: Let me ask him a question, please.

BY GEN. McCLANAHAN:

Q. Now would you undertake to say who he said would match his money?

A. He said the Government.

Q. Are you positive about that?

(Exhibit 1)

A. I think I am; it has been a pretty good while.

MR. GWINN: Let him finish.

MR. McCLANAHAN: Go ahead.

THE WITNESS: That has been a long time. I couldn't repeat word for word what he said.

Q. You mean his whole conversation?

A. Yes, sir. Mr. Pierce was talking fast all the time he was there. I was looking—some parties at the barn, waiting for me. I was in a hurry. I didn't try to take down all he was saying. When I saw my neighbor's names, where they bought it, I thought it was all right. The Luckey boys and some of our leading citizens of the county had bought this and I thought I would help them out;****

(n 135)

Q. Did Mr. Pierce say "they" would match your money?

A. He said the Government would match what I put into it.

MR. McCLANAHAN: All right.

CROSS EXAMINATION By Mr. Gwinn:

Q. You are stating your conclusion, or understanding about the matter; but you are not undertaking to state after the lapse of these years, and wouldn't undertake to state just exactly what language Mr. Pierce used in that connection; would you?

A. No, sir; I wouldn't.

RE-DIRECT EXAMINATION:

By MR. McCLANAHAN:

Q. Do you mean by that the "whole conversation"?

A. That is right; I couldn't go back and state all that happened at that time.

Q. Did Pierce talk fast or slow?

A. Tolerably fast.

BY MR. GWINN:

Q. When it came to matching the funds, if I understand you—if I don't correct me—as I understand, when it came to matching these funds, you said, in answer to my question a while ago, that you couldn't state, now, the exact language

(Exhibit 2)

that Mr. Pierce used in that connection, and that you couldn't be positive whether the Government would match it, "We" match it, "they would match it", or "his concern," or his "company"; you are just stating your conclusion or impression?

A. No, sir; he said "Government would match it". If I put $5.00 or $10.00 in this, would match whatever I put in it.

Q. He said "they would match it"?

A. Yes, sir.

Q. And when he said that you thought he was referring to the Government?

THE COURT: You are excused.

THE WITNESS: He said the Government; that is the way I understood.

Q. That is what You understood?

A. Yes, sir.

Q. But you wouldn't state positively, the exact language he used?

A. I wouldn't say, for sure; that has been so long; I couldn't state it word for word.

MR. McCLANAHAN: You would not swear to any of that word for word?

A. No, sir.

(Exhibit 2)

During Testimony of MR. HARRIS H. UTLEY:

BY MR. McCLANAHAN:

Q. I am going to ask you just to go ahead and state to the court and jury, to the very best of your knowledge and remembrance, just exactly what happened in the conversation that took place between you and Mr. Pierce; and, Mr. Roach, if any.

A. Well, Mr. Pierce came up—they were about I reckon 30 feet from me. I was washing the mud out of my radiator—mail car—I saw them coming. I met them about half way. Mr. Pierce said "you are a mighty hard man to find at home; this makes the third trip out to see you". I told him "Yes, I

(Exhibit 2)

had to go to Jackson, and was a little late getting back"; and, Mr. Graves introduced Mr. Pierce, and Mr. Pierce introduced Mr. Roach. He said "I under stand you are the mail-carrier". I said "Yes." He said "About how much of your road is dirt?" I told him about 30 or 40%. He said "Wouldn't you like to have it graveled?" I said "Yes, sir, I certainly would." He said "I think we can get it graveled for you in a short time—right away." He said we are representing the TVA-Muscle-Shoals Power; we are selling this TVA in units, $10.00 units. He says "We put up dollar for dollar to every dollar the people put up; and, communities that are interested in it will get current within a short time." I think he said within about six months. I said "What about the people that don't put up, and not interested in it?" He said he didn't know when they would be taken care of. Mr. Roach had a bundle of papers on his arm, looked like about four or five Sunday Commercial Appeals. He came around and was showing me different counties they had worked; pointed back toward Dyer County, and said, worked all of it"; turned the papers over and commenced showing them to me. It was so dark I couldn't see. I remember seeing "Dyer County". He said "We just lack three or four more counties back this way, and then we will start with the lines, putting up the lines. He said "A man of your ability ought to buy about $50.00 worth; five units." I said, "No, not me." I wasn't interested. I said "I don't care anything about it." He started off. I turned and asked him who was taking stock; he read the names around there; he named Clarence Luckey, Joe Luckey, Johnnie Simpson, Frank Blackman, and Cale Witt. They had all been after me about getting gravel on the road. So, I said "Well, let me have $10.00 worth. He turned back to the names of those who had taken stock and said, let me make it two $10.00," and asked me about my wife, and I told him no. I asked him was a mail-carrier's credit any good? He said he would have to have the money to send off. I went in the house to get the $10.00 for him. He had wrote a receipt, when I came back and he asked Roach if they had enough money in the treasury to

(Exhibit 2)

buy a unit for my wife, and he said "Yes, I think so."

Q. Who said that?

A. Roach. That is about all Roach said "Yes; um-hum; I think so."

THE COURT: What did you think Roach said?

THE WITNESS: He said "Um-hum, I think so". And he wrote on top of the receipt—I have the receipt in my pocket, if you care to see it.

Q. Yes. Yes; I would like to see the receipt; did you pay him in cash?

A. Yes; I paid him $10.00 in cash..

ON CROSS EXAMINATION BY MR. GWINN:

Q. Now, Mr. Utley, I want you to listen carefully—you testified on the former trial?

A. Yes, sir.

"Q. Detail to the jury just how these gentlemen approached you and what was said? Answer: They came up—I was about—they stopped I reckon about 120 feet from where I was; it was just about night; that was the third trip they had made to see me and they came up and said 'You are a mighty hard man to find.' I said 'Yes; I had to go to Jackson this evening and was rather late getting back.' They came up and Mr. Graves introduced Mr. Pierce and Mr. Pierce introduced Mr. Roach to me. They came up and he said "I understand you are a mail-carrier.' I said 'Yes, I am.' He said 'How much of your road is dirt (etc.) ***

He said 'Wouldn't you like to have it graveled?' 'Yes, I think I would'. He said 'I think we can get it graveled for you in a very short time. He said he represented the TVA, Muscle-Shoals Power, "we put up a dollar for dollar; for every dollar the community people put up, we will match it; and we will have a line running through' he said he would have it through here in six months time, in the communities interested in it.' I said "The communities not interested in it, what about them?" He said "I don't know when they will get in. I don't know. They may not get in. He said "We are selling these

(Exhibit 3)

(Exhibit 4)

units at $10.00 each, and a man of your standing ought to buy at least $50.00 worth.*****

(Exhibit 3)

During MR. FRANK BLACKMAN'S testimony (n 156)

Q. Who if anybody introduced you to Mr. Pierce and Mr. Roach?

A. Not anybody introduced me.

Q. Were you introduced to them?

A. No, sir; Mr. Pierce came up. I saw a car coming in the field, I looked up and saw three men getting out and coming toward me, and Mr. Pierce threw up his hand "Hello, Hello, Frank."

Q. Had you ever met him before?

A. No, sir; I didn't have any idea who he was.

Q. Go ahead*****

Q. Tell us just exactly any conversation that you had either with Pierce or Roach and tell us what happened?

A. Mr. Roach didn't say anything; Mr. Pierce wanted to know would I buy some units in TVA. I told him "no"; I didn't feel like I was able to. He said, well he was calling on the prosperous farmers around through the community, and he was told that I was one of them; and, he said if they could —he tried to get me to buy one unit (etc.)

(Exhibit 4)

During testimony of MR. J. H. SIMPSON (n 4) bk 2-23-39

Q. From then on, when he holloed "hello John" go ahead and take your time in your own words, the best you remember, tell the court and jury the conversation that took place between you and Mr. Pierce or Mr. Roach if any?

A. Well, first he was talking about farming, and my crop looking good, and from that on led out to what he was doing.

Q. Just tell us, what he said, or was doing?

A. Well, he said he was selling units—or selling units in the TVA-Muscle-Shoals.

(Exhibit 4)

Q. All right, sir; go ahead.

A. And that all my neighbors—he was selling in that section. He told about it. I think it was north of us, selling—and he come in there, and he was wanting to sell the people through there, and he said if we would buy — the Government—we would buy so many units and the Government would pay dollar for dollar, as many dollars as we paid the Government would pay dollar for dollar and that would help to get a line through quicker—through the rural sections; they were working through there and that would help to get the line through sooner by doing that. And, I didn't much want to take one. He said, "You know you want to help your neighbors around through the country—told me about the Luckey boys, the Rowletts and other different ones around who had bought; he said "You know you want to help your neighbors and friends around through the country to get it in. He said you know you would like to have it.

Q. What?

A. Lights. Lights. TVA. And we were expecting it to come in, of course—sometime soon; we didn't know when.

Q. Did you go in and buy any of it?

****On Cross-Examination by Mr. Gwinn.

(n 15)

Q. You saw that (advertisement); did they tell you how much one of those advertisements cost the County?

A. I wouldn't say.

Q. You don't know about that?

A. No, sir. I knew he told me that there was a cost to it, to something. I don't know just what it was. I understood it was costing the Government so much to put this over—would help out in it some way. A good sum.

I don't know just how much. I wouldn't say.

(n 20)

Q. And he told you he was putting on a program to help get Muscle-Shoals Power through the community; didn't he?

A. I understood that he was working, selling these units; I wouldn't say about that.

(Exhibit 5)

MR. J. H. SIMPSON on Re-Dr by Gen. McClanahan: (n 20)

Q. Did he tell you—don't answer this, now, until—did he tell you that—who was he representing?

MR. GWINN: If your Honor please, he went over those matters in chief.

THE WITNESS: He was representing the TVA, Muscle-Shoals.

THE COURT: I think it is alright for him to repeat that, even if he has said it. Do you want to examine him further on that?

BY MR. GWINN:

Q. He said he was representing the TVA-Muscle-Shoals Power, and wanted to help get it in the community, or that in substance?

A. Yes, sir; and he also said—is it all right for me to tell about him and Frank D. Roosevelt? He asked me what I thought about the Administration and what I thought of him; and, what friends they were together, boys up so high; that they came up together, and all that.

Q. Isn't it a fact that he told you he had known Mr. Roosevelt almost from the time that he was a boy?

A. Yes, sir.

Q. And that he, Mr. Pierce, and Josephus Daniels, then Secretary of the Navy, a newspaper man, had been long friends and he knew Roosevelt when he started out on his career in Washington?

A. He said they came up boys together.

THE COURT: Let him answer; You say he said he came up boys together?

A. Yes, sir. He held out his hand this way (illustrating) "Ever since they had been that high, they had been great friends and worked together (indicating with his hand).

(Exhibit 6)

CLARENCE LUCKEY

DIRECT EXAMINATION

BY GENERAL McCLANAHAN

Q. Just tell us what happened?

A. Mr. Pierce drove up and hollered "Hello, this is Clarence"? "Yes, sir." "Four of you boys?" Yes, sir. He named them: Joe, Will, Luther and myself. He knew Will mighty well; he had a good job, he said, at Jackson; and he says "We are here representing the Government in behalf of the—trying to sell TVA units, and "it won't be long until we have this TVA power all through this country."

CROSS EXAMINATION

BY MR. GWINN

Q. All right, go ahead.

A. He just stepped out of the car and hollered "Hello, Clarence," or "this is Clarence?"; something to that effect, and then come around and said "four of you boys?" "Yes, sir." And he named all the four, and talked about the cabbage patch, and then he just got into his business; I mean where he represented the government on behalf of the TVA, and "if you farmers will take hold we will put this over."

(Exhibit 6)

CARL ROBINSON

DIRECT EXAMINATION

BY GENERAL McCLANAHAN

Q. Go ahead?

A. Well, they drove up and blowed the whistle and I went out on the porch and when I stepped out before I got in the yard Mr. Pierce had said "hello there, Carl."

Q. Is that your first name—Carl?

A. Yes, sir.

Q. All right, go ahead.

A. Well, I have wondered who he was. I had never seen before and he made himself acquainted and I still didn't know him and he wanted to sell me some TVA stock; he said he was representing the Government and wanted to sell me

(Exhibit 7)

some units, TVA stock. He talked on and finally talked me into buying $20.00 worth.

CROSS EXAMINATION

BY MR. GWINN

Q. You didn't think you were buying anything, did you?

A. No, sir, just helping out to get TVA.

Q. You identified in your own mind TVA and cheaper power—they meant the same thing to you?

A. Yes, sir.

(Exhibit 7)

DR. D. J. CONYERS

DIRECT EXAMINATION

BY GENERAL McCLANAHAN

Q. All right, now, go ahead; start in with the introduction and tell the Court and Jury exactly what happened, to the best of your recollection—the conversations and everything, had between you and Mr. Pierce, if any?

A. I was out doors; I wasn't in the house when I saw him. He was out of his car and on my front lawn and I walked around from the rear of the house and when I saw it was a visitor—and when I got within say thirty feet of him he called my name very familiarly. ****Then he told me that he, as a representative of the TVA, was proposing to sell what he called units, and that Crockett and other counties were expected to match units that were to be furnished by TVA, and that the counties had been very responsive to his solicitation and he was sure—that he had had a fine response in Crockett County, and he felt like it was going over the finest way, and he said he could just tell by looking at me that I wasn't a slacker.

CROSS EXAMINATION

BY MR. GWINN

Q. And nobody represented to you that he was selling stock?

A. No, he said he was selling units.

Q. Doctor, you were making a contribution for what you

(Exhibit 8)

thought was of benefit to Crockett County?

A. I thought I was making a contribution to hurry up this TVA current to the rural sections of Crockett County.

(Exhibit 8)

J. B. CHERRY

DIRECT EXAMINATION

BY GENERAL McCLANAHAN

Q. Go ahead in your own way and tell the jury all conversations from the time you first saw him; who introduced you, if anyone; who was with him and the exact conversation that took place between anybody there on that occasion?

A. Well, Mr. Pierce and Mr. Roach had been down at my home and I was away from home * * * * and he (Mr. Pierce) was in the car and he met me in the highway in the road and stopped and threw up his hands, and this man Pierce got out of the car and I got out of my car, too. When I come up close he said "hello, J. B.". That's my initials J. B. and he was so friendly to me and talked so nice to me and I looked at him the second time and I said "you have the advantage of me; I don't believe I know you." He introduced himself to me then and told me his position. He said he was there to sell some TVA units or stock to us farmers of Crockett County and other counties and insisted on me taking $100.00 worth of units—stock in TVA.

CROSS EXAMINATION

BY MR. GWINN

Q. He told you he was carrying on a campaign promoting better roads and lower taxes and cheaper power, didn't he?

A. He said something about we would have better roads and cheaper taxes, yes, sir.

ORDER: OVERRULING MOTION FOR NEW TRIAL.

Entered June 2nd, 1939. John D. Martin, Judge.

Came on this cause to be heard upon the defendant's written motion for a new trial. Upon the hearing thereof, no evidence was offered except the affidavit of the defendant,

J. E. Pierce filed in support of the motion and read to the court. Upon consideration of the motion and hearing arguments of counsel, the court is of the opinion that the same is not well taken and it is, therefore, disallowed and overruled. To which action of the court in overruling the motion the defendant duly excepted.

Upon statement of counsel in open court that appeal would be taken from the judgment of this court to the United States Circuit Court of Appeals for the Sixth Circuit, and upon application therefor, the defendant is allowed to remain at large upon bail, pending the final disposition of the case, and the court being of the opinion, and counsel for the Government and the defendant concurring in that view, that the terms of the present bail bond of the defendant adequately binds him to appear and answer the judgment of this court when and if directed so to do. He is, therefore, allowed to stand upon his present bond.

Approved: William McClanahan
United States Attorney

In the District Court of the United States Western District of Tennessee.

UNITED STATES OF AMERICA,

vs

J. E. PIERCE

NO. 5309 Criminal.

ASSIGNMENTS OF ERROR

Comes now the Defendant, J. E. Pierce, by his attorney, and files and presents to the Court as his Assignment of Errors, herein, whereby the Defendant, as appellant, assigns as error in the record and proceedings of the District Court of the United States within and for the Western Division of the Western District of Tennessee, in the above entitled cause, the following particulars and errors to wit.

Assignments Of Error

I

The Court erred in submitting the case to the Jury because there is no substantial evidence to support a verdict of Guilty under any count of the indictment.

II

The Court erred in overruling appellant's motion for a directed verdict, made at the conclusion of all the evidence, exceptions being duly taken to the action of the Court in so doing; which motion is as follows:

> MR. GWINN: Comes the defendant, J. E. Pierce, and moves the Court to instruct the Jury to return a verdict of Not Guilty on each and all of the counts of the Indictment for the following reasons, to-wit:

First, there is no evidence to support a verdict;

Second, The evidence, when considered as a whole, is as consistent with the innocence as with the guilt of the defendant; and, therefore, does not warrant submission of the case to the Jury:

Third, as to the counts based on the first provision of Section 32, Title 18, U. S. Code Sec. 76 of the Criminal Code, and which makes it an offense for any person with intent to defraud, falsely to assume or pretend to be an Officer or Employee acting under the authority of the United States or any Department or any officer of the Government thereof and who shall take upon himself as such."

There is neither allegation in the indictment, nor evidence of any act on the part of the defendant, Pierce, as an Officer, or Employee of the Federal Government, and no evidence that the defendant Pierce officiated, or attempted to officiate as an officer or employee acting under the authority of the United States, or any Department or any officer of the Government thereof;

Fourth, As to counts based on the second division of said section 32 of the Criminal Code (18 USC Sec. 76) which makes it an offense for any person, with intent to defraud

to demand or obtain any money, papers, documents, or other valuable things" while acting in a purported Federal Official character, There is neither allegation in these counts of the indictment, nor evidence that the defendant, J. E. Pierce, demanded or obtained anything of value by reason of false personation of an employee, or officer of the United States Government, or any department or officer thereof;

Fifth, The Tennessee Valley Authority, while an instrumentality of the Government, is a corporate entity, separate and distinct from the Government, so that employees thereof are not Officers or employees of the Federal Government or any Department thereof, so as to come within the purview of Sec. 32 of the Criminal Code; and consequently, any claim that the defendant, Pierce, was connected with the TVA, or representing the TVA would not constitute a false personation under Sec. 32 of the Criminal Code;

Sixth, The undisputed evidence shows that in each and every transaction complained of in any count of the indictment the person from whom funds were obtained was given a receipt therefor, this showing that the money was received, not in a Federal Official character, but as Publisher of a newspaper, and even though the evidence should be susceptible of the interpretation that the defendant claimed to be selling TVA Units, such a representation, in the face of the fact that each person name in any count of the indictment had at hand the means of detecting the falsity, would not constitute a false pretense within the meaning of the Federal Statute;

Seventh, There is no evidence of any overt act which is an essential element of both of the offenses denounced by Section 32 of the Criminal Code, and the mere representation, or claiming to be an Official, a Federal Official, would not constitute a violation of that Statute.

I believe those are the grounds, in substance.

THE COURT: All right. Motion overruled.

MR. GWINN: Note our exception.

THE COURT: Your exception is noted.

Assignments Of Error

III

The Court erred in overruling appellant's motion for a new trial, and particularly the sixth ground thereof, complaining of the action of the trial Judge in refusing to grant a special request duly tendered by appellant and set forth in the next succeeding assignment of error to which reference is here made.

IV

The Court erred in refusing appellant's special request number one (1), exception being duly taken to such refusal. The Request so submitted and refused being as follows:

" 'At the request of the defendant, the Court further instructs the Jury that the Tennessee Valley Authority, commonly designated as T. V. A., although an instrumentality of the Federal Government, is a corporate entity, separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the T. V. A. as an officer or employee, would not constitute the false impersonation of an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, T. V. A. officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment.' "

This was error for the following reasons:

(a) The offense alleged in the indictment and sought to be proven, if committed at all were committed in May and June, 1935.

(b) The impersonation of an officer or employee of the

Tennessee Valley Authority, if defendant impersonated such officers or employees, or claimed to be a representative of the T. V. A., was not within the scope of Section 32 of the Criminal Code, (USCA Title 18, Sec. 76) until the Amendment thereof on Februarv 28th, 1938, which amendment was adopted approximately three years after the commission of the alleged offenses for which defendant was tried and convicted. Said section as it now reads with the February 28th, 1938 amendment thereof, underscored, is as follows:

> "76 (Criminal Code, Section 32) Falsely pretending to be a United States Officer.
>
> Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, *or under the authority of any corporation owned or controlled by the United States*, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department thereof, or any officer of the Government thereof, or any corporation owned or controlled by the United States, any money, paper document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both. As amended February 28, 1938, c. 37, 52. Stat. 83."

(B) In the absence of the foregoing instruction or a specific instruction on the point therein presented, the jurors were given no guide to distinguish between the legal effect of representation, if any, that defendant claimed to represent the Federal Government, if such were made, that he was connected with or represented the T. V. A. and was selling T. V. A. Units. And in view of the blending of the evidence as to such alleged representation concerning the Government and the T. V. A., the instruction requested was necessary to

a clarification of the issues and a restriction thereof to offenses within the scope of section 32 of the Criminal Code as it existed at the time of the commission of the offenses charged in the indictment."

V

The Court erred in ruling that certain questions asked by counsel for appellant on his direct examination were leading questions.

These rulings being as shown by the following proceedings to wit:

During direct examination of the appellant Pierce, the following occurred:

Q. Mr. Pierce, in giving a receipt to the subscriber, did you fold that receipt or not, or do you recall?

A. I don't recall ever having folded a receipt. It was on a pad and when I wrote it I handed it to the Prospect with my right hand and held the pad with my left hand.

Q. If you had folded—

GENERAL McCLANAHAN: Don't lead the witness.

MR. GWINN: I would like to ask the question and then have your Honor rule on it.

THE COURT: Ask the question.

MR. GWINN: I was preparing to ask the question when General McClanahan interrupted.

Q. Mr. Pierce, if you had folded receipts, as testified to by some of the Government witnesses, what reason, if any, did you have for folding the receipts?

GENERAL McCLANAHAN: I object to that your Honor.

THE COURT: Sustained.

MR. GWINN: Note my exception.

Q. After giving receipts to a prospect, did you remain in the community or immediately leave the community?

A. I stayed in the community where I was working until I got through.

Q. And the receipts in evidence were in the form, I believe you have stated were on the billhead of the paper?

A. Yes, sir.

Q. Mr. Pierce, do you remember Mr. Joe Luckey?

A. Yes, sir.

Q. Did you see Mr. Luckey after you had been arrested in Gibson County?

A. Yes, sir.

Q. What, if anything, took place between you and Mr. Luckey on that occasion?

A. Mr. Luckey was very angry and demanded the return of his $10.00 or he was going to turn me over to the Government, and advanced on me in the crowd, and the presiding magistrate remonstrated with him that he was a magistrate himself and it was up to him to be a peace officer, I told him to turn me over,—I hadn't violated any law.

Q. Did he attempt to make an assault on you?

GENERAL McCLANAHAN: He is still leading him, your Honor.

THE COURT: That's sustained.

MR. GWINN: I am not going to argue with the Court.

THE COURT: You observe the rules of the Court, Mr. Gwinn, and quit arguing back.

MR. GWINN: Note my exception.

THE COURT: Your conduct is reprehensible. You are being deliberately disrespectful to the Court and you want to desist from that."

VI

The Court erred in the following comment during the Cross Examination of the Government witness, J. T. Mathis:

"And this, during cross-examination of the government witness, J. T. Mathis:

BY MR. GWINN:

"Q. You remember very distinctly you were speaking just about like you are speaking now?

A. I have been asked to talk loud so the honorable Court can hear, and I had been asked to talk loud, and naturally that caused me to raise my voice.

THE COURT: I want to thank you for it. I haven't had a witness testify in my Court in several months that testified in a better tone of voice.

THE WITNESS: Thank you, Judge."

VII

The Appellant was denied a fair and impartial trial in the proceedings which occurred during the cross examination of the Government Witness, Carl Robinson:

"Q. (Mr. Gwinn) Did you ask Mr. Pierce to wait?

A. No, I—

Q. Did you—

GENERAL McCLANAHAN: What did you start to say?

A. I didn't have time to ask him.

Q. You didn't say 'hold on there?'

A. No, sir.

Q. You said nothing?

A. No, sir.

Q. And you let him go without any protest or complaint whatever with your $20.00?

A. I sure did.

MR. GWINN: That's all.

RE-DIRECT EXAMINATION

BY GENERAL McCLANAHAN

Q. I believe you stated you didn't have time—

A. I didn't have—

MR. GWINN: If your Honor please—

THE COURT: I think that is correct cross-examination, Mr. Gwinn. You may explain why you didn't protest to the defendant.

A. In fact, Mr. Roach had done started the car and Mr. Pierce stepped in the car and drove right on off, and in fact, gentlemen, I am not educated and don't know a great deal, and I never thought anything about the man being frisking me out of $20.00 like he did.

THE COURT: You may examine him further, Brother

Gwinn, if you want to.

MR. GWINN: No, if your Honor please."

VIII

The court erred in the following ruling, made during the cross examination of the government witness, Cherry:

"Q. You would not undertake to give this Jury now, the exact language Pierce used in any part of that conversation three or four years ago?

A. I can give it pretty straight, Mr. Gwinn.

Q. That wasn't my question.

THE COURT: I think he answered it. Go ahead.

MR. GWINN: We want to note an exception, Your Honor.

THE COURT: Note your exception."

IX

The court erred in the following ruling during the cross examination of the government witness, Reau Graves:

"Q. And you wouldn't undertake to repeat the exact language he (Pierce) used on that occasion? I say you wouldn't undertake to do that?

GENERAL McCLANAHAN: If the court please, Mr. Gwinn asks the witness a question and won't give him a chance to answer.

MR. GWINN: I am asking him if he would undertake to repeat his exact language.

THE COURT: Objection is sustained. Give the witness a chance to answer."

X

The court erred in the following ruling during the cross examination of the government witness, Reau Graves:

"Q. Working in the interest of the government?

A. He said for the government.

Q. If you can't remember his exact language, how do you know he said he was working for the government?

GENERAL McCLANAHAN: If the court please, the witness has emphatically stated, on three or four occasions,

that he said that. Mr. Gwinn continues to argue with the witness.

THE COURT: I think so.

MR. GWINN: Note our exception."

XI

The appellant was denied a fair and impartial trial in that the District Attorney persistently and consistently sought to convey to the jury the impression that appellant was soliciting funds for worthless advertising, so doing despite objections of appellant and ruling of the court, and to subject appellant to scorn and ridicule, including his appearance and the clothes that he wore during his advertising campaign, repeatedly asking witnesses such questions in substance as these:

Did you want to advertise your daughters as school teachers in Alabama?

Can you name "one road" that was benefitted by the canvass of defendant?

What good did the advertising do your County?

What kind of a hat did appellant wear?

And this:

"I reckon when he (Pierce) did go to see preachers he would inquire into the religion of the community?

Tell me one road that has been improved in Tipton County?

Now, what benefit could have accrued to any of these counties from that advertisement?

You (appellant) were giving Mr. Cherry publicity in Alabama and he was running for Sheriff in Tennessee, what advantage could he get out of that sort of publicity?

What were you (appellant) giving the communities?"

And this to appellant:

"Please cite to the jury one instance where any advertising in any of these edition—where any county in West Tennessee has been benefitted by it?"

And this to appellant's witness, Bringle:

"I will ask you what benefit Tipton County got from that advertising, if you know?

And this to appellant's witness:

"You were a little ashamed of it? (Referring to his subscription to the advertisement).

And this to one of appellant's witnesses:

"Were you inspired by what Mr. Pierce told you or what his paper told you?"

And this:

"Did he create any public interest to make them go after better roads or cheaper power?"

XII

The court erred in overruling appellant's motion for a mistrial based upon the unfair and prejudicial cross-examination of the appellant's witness, E. H. Roach.

Wherefore, the defendant prays that the judgment of the District Court, on the indictment filed herein, and on account of each one of the errors and assignments above set out, and for other manifest errors in the record of the trial of the case, be reviewed, reversed and annulled, and that such other orders be made herein as are right and proper in the premises, and that the defendant be discharged from the judgment against him and restored to all the rights of which he has been deprived by reason of the jury verdict and the judgment herein complained of.

L. E. Gwinn
Atty. for appellant,
J. E. Pierce

Order

UNITED STATES OF AMERICA

vs.

J. E. Pierce

ORDER: EXTENDING TIME TO FILE BILL OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

In this cause, upon application of appellant, J. E. Pierce, made within the thirty days allowed for filing bills of exceptions by the rules of the Supreme Court, and for good cause to the court shown, the appellant is allowed an extension of time to file a bill of exceptions and assignments of error in this cause, the time being extended to and including October 1st, 1939. It is further ordered, however, that counsel for appellant submit the bill of exceptions to the United States Attorney not later than September 1, 1939, so that counsel for the Government may have an opportunity to suggest correction, changes or additions to the bill of exceptions as prepared by appellant.

Enter; John D. Martin, U. S. District Judge.

William McClanahan

Assignments Of Error

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

SIXTH CIRCUIT

J. E. Pierce,

Appellant,

-vs-

UNITED STATES OF AMERICA,

Appellee.

NO._____

PRAECIPE

The Clerk of the Court is hereby directed to prepare and certify the transcript of the record in the above entitled case for the use of the United States Circuit Court of Appeals for the Sixth Circuit by including therein the following:

(1) the indictment; (2) the verdict of the jury and the sentence of the defendant on the several counts on which a verdict of guilty was returned; (3) the notice of appeal; (4) the bill of exception; (5) the motion for a new trial; (6) the order of the Court overruling the motion for a new trial; (7) the assignments of error; (8) the order extending the time to file a bill of exceptions.

L. E. GWINN
Attorney for appellant

WILLIAM McCLANAHAN
United States Attorney.

AMENDMENT TO PRAECIPE

In this cause the praecipe is amended so that the Clerk in making up the record instead of setting out the indictment in full, as returned by the Grand Jury, will only include the 15 Counts thereof submitted to the jury and on which a verdict of guilty was returned.

William McClanahan,
United States Attorney.
L. E. Gwinn,
Attorney for Defendant.

CLERK'S CERTIFICATE
DISTRICT COURT OF THE UNITED STATES

Sixth Judicial Circuit

Western District of Tennessee

I, Sam L. Gordon, Clerk of the District Court of the United States, for the Western District of Tennessee, do hereby certify that the papers hereto attached, are full, true, perfect, and correct copies of the original record as called by praecipe in said Court as the same now appears of record and upon the files in my office, in the following cause, to wit:

No._____ J. E. Pierce, Plaintiff in Error, vs. United States of America, Defendant in Error

In Testimony Whereof, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Memphis, Tennessee, this_____day of _____ A. D. 1940, and of the Independence of the United States the 164th year.

(Seal)

Sam L. Gordon,
Clerk.

AUTHENTICATION.

I, John D. Martin, a Judge of said Court, do hereby certify that Sam L. Gordon, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court and that his attestation is in due form.

John D. Martin,
Judge of the District Court of the
United States for the District aforesaid

[fol. 345] Minute entry of Argument and Submission, June 3, 1940, omitted in printing.

In United States Circuit Court of Appeals, Sixth Circuit

Judgment—Entered November 15, 1940

Appeal from the District Court of the United States for the Western District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Tennessee, and was argued by counsel. [fol. 346] On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

[fol. 347] In United States Circuit Court of Appeals, Sixth Circuit

No. 8352

J. E. Pierce, Appellant,

v.

United States of America, Appellee

Appeal from the District Court of the United States for the Western District of Tennessee

Opinion—Filed November 15, 1940

Before Hicks, Allen and Arant, Circuit Judges

Arant, Circuit Judge:

Appellant was convicted of violations of § 32 of the Criminal Code, as amended by the Act of March 4, 1909, c. 321, §32; 35 Stat. 1095; 18 U. S. C. A. (1927 ed.) § 76.* We re-

* The language of the statute was as follows:

"Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United

versed the judgment and remanded the cause for a new trial, holding certain questions asked by the District Attorney improper and prejudicial. Pierce v. United States, 86 F. (2d) 949. At the next trial, E. H. Roach, a co-defendant in the earlier trial and a co-appellant on the former appeal, was acquitted, but the jury was unable to agree on a verdict as to appellant. At the third trial, appellant was convicted on fifteen counts of the indictment, and sentences aggregating eight years' imprisonment and fines totalling $3,750 were imposed.

The charges were that appellant, with intent to defraud, had pretended to eight named individuals that he was a representative of the United States Government selling "T. [fol. 348] V. A. units" and that sums of money ranging from $10.00 to $25.00 were obtained from seven of these by means of such pretenses.

We first consider whether there was sufficient evidence to require submission of the case to the jury.

The trial consumed five days, and there were thirty-five witnesses. Both parties persistently attempted to discredit opposing witnesses by reference to their testimony at the two previous trials, and, as was perhaps to be expected, there is contradiction and some confusion in the testimony. If appellant's witnesses were to be believed, appellant had simply engaged in an extensive sale of advertising space in a newspaper published in Huntsville, Alabama, for the purpose of promoting, through community cooperation, as appellant put it, rural development of counties whose residents purchased advertising, and appellant was not responsible for the contrary impressions of the government's witnesses. On the other hand, if the government's witnesses were to be believed, appellant had capitalized upon his prospects' natural interest in the objectives of the Tennessee Valley Authority by leading them to believe he, as representative

---

States, or any department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department thereof, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both."

of the United States Government, was raising money from private individuals to be matched by government contributions for the purpose of hastening development of the Tennessee Valley Authority and insuring extension of its benefits to their respective communities.

As the verdict shows, the jury believed the latter witnesses; and their credibility must be assumed on review, unless clearly impeached. Evidence that supports conviction must be given the most favorable construction of which it is reasonably susceptible. Burton v. United States, 202 U. S. 344; Meyers v. United States, 94 F. (2d) 433 (C. C. A. 6); Fitzgerald v. United States, 29 F. (2d) 881 (C. C. A. 6); Galatos v. United States, 80 F. (2d) 15 (C. C. A. 8).

We are aware of the rule, relied upon by appellant, that when all the substantial evidence is as consistent with innocence as with guilt, the conviction should be reversed. That rule, however, is inapplicable here, because there is substantial evidence that is inconsistent with appellant's innocence. Chambers v. United States, 237 F. 513 (C. C. A. 8); Craig v. United States, 81 F. (2d) 816 (C. C. A. 9).

Appellant relies heavily upon the failure of government witnesses to state positively the exact words used in the alleged impersonations and their frequent admissions that their memories were vague about some less important matters; but a witness who with positiveness could recount all [fol. 349] the details surrounding an event that had occurred four years previously would be either a genius or unworthy of belief. 3 Wigmore on Evidence (3rd ed., 1940) § 726.

The evidence selected by appellant for emphasis is contradicted by competent testimony, or, at most, gives rise to mere inferences in his favor. For instance, anyone who read in its entirety the letter of introduction carried by appellant during his campaign would have known that he was not a government representative, but only a private individual soliciting community advertising; however, there was evidence that he had sometimes not used the letter, sometimes read only part of it, sometimes stated or given the impression that it was signed by President Roosevelt, and on one occasion refused to allow a prospect to read it.

The Court committed no error in overruling appellant's motion for a directed verdict.

Appellant also assigns as error the Court's refusal to give the following special instruction at the conclusion of its general charge:

"At the request of the defendant, the Court further instructs the jury that the Tennessee Valley Authority, commonly designated as TVA, although an instrumentality of the Federal Government, is a corporate entity, as separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the TVA as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, TVA officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment."

Appellant claims that the testimony of government witnesses could be construed to mean that appellant represented himself to be an officer or employee of the Tennessee Valley Authority and insists that the general charge will be examined in vain for the semblance of a suggestion that officers or employees of the Tennessee Valley Authority [fol. 350] were not within the purview of the statute. So vital a matter, he contends, should have been called to the jury's attention in an explicit instruction.

We disagree. The charge was explicit and the conviction was supported by evidence that appellant held himself out not as an officer or employee of the Tennessee Valley Authority, but as "acting under the authority of the United States Government," which is a quite different thing and clearly within the condemnation of the statute. The Court's charge, to which no exception was taken, amply and correctly stated the law, and we do not believe the jury was misled as to the issues or the outcome of the trial influenced in any way by failure to give the instruction.

Appellant claims that several rulings, assigned as separate errors, constitute, in their aggregate, prejudicial and reversible error. We have examined these rulings and

think they were within the sound discretion of the Court, but we are clear that neither separately nor in their aggregate did they prejudicially affect appellant's trial.

The judgment of the District Court is affirmed.

[fols. 351-367] Petition for rehearing covering 15 pages, filed Dec. 19, 1940, omitted from this print. It was denied, and nothing more by order of Feb. 4, 1941.

[fol. 368] In United States Circuit Court of Appeals, Sixth Circuit

Order Denying Petition for Rehearing—Entered February 4, 1941

The petition to rehear is denied.

Judge Arant, who wrote the opinion in this case, died before the petition to rehear was considered and acted upon by the court.

[fol. 369] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 370] Supreme Court of the United States

Order Allowing Certiorari—Filed April 14, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration or decision of this application.

Endorsed on cover: Enter L. E. Gwinn. File No. 45,182. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 36. J. E. Pierce, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed March 11, 1941. Term No. 36, O. T., 1941.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1940.

No. ~~822~~ 36

J. E. PIERCE, PETITIONER,

VS.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND SUPPORTING BRIEF.

L. E. GWINN,
Attorney for Petitioner.

INDEX

Petition for Writ

I. Summary Statement of Matters Involved 1
(a) The indictment 4
(b) Statute involved 5
(c) Theories of parties 5
(d) Holdings of court of appeals 6
(e) The government testimony 8
(f) Questions presented 10

II. Reasons Why the Writ Should Be Granted 12

Brief in Support of Petition

I. Opinion of Lower Courts 17

II. Jurisdiction 17

III. Specifications of Error 17

IV. The Facts 18

V. The Refusal of Petitioner's Special Request Was a Denial of Due Process of Law 23

VI. The Motion for a Directed Verdict Should Have Been Sustained 26

VII. A Mere Verbal Declaration of a General or Undefined Federal Agency or Employment Unaccompanied by Any Apparent or Colorable Official Act Does Not Constitute the False Personation That Is an Essential Element of Both Offenses Denounced by Section 32 of the Federal Criminal Code 32

Conclusion 35

TABLE OF CASES

American Bell Telephone et al. vs. People Telephone Co. et al., 22 Fed. 309 12
Barnow vs. U. S., 239 U. S. 74 ..... 15, 33
Bates County vs. Wills, 239 Fed. 785 (C. C. A. 8) 25
Bird vs. United States, 100 U. S. 356, 45 L. Ed. 570 ..... 13, 25
Bush vs. United States, 196 Fed. 579 34
Cronin vs. People, 80 Michigan 646 33
Ferguson vs. United States, (10 C. C. A.) 293 Fed. 361 33
Gunning vs. Cooley, 281 U. S. 90, 50 S. Ct. 231, 74 L. Ed. 720 ..... 13, 28, 35
King vs. United States, (5 C. C. A.) 279 Fed. 103 33
Lamar vs. U. S., 241 U. S. 103 ..... 15, 33
Lamento vs. United States, 2 F. 2d 900 (C. C. A. 8) 26
Little vs. U. S., 73 F. 2d 861 (10 C. C. A.) 13, 14, 25, 32
Nicola vs. U. S., 72 F. 2d 780 (3 C. C. A.) 13
Northern Central Coal Co. vs. Hughes, 224 Fed. 57 (C. C. A. 8) 25
Patten vs. U. S., 281 U. S. 276 25
Read vs. United States, (2 C. C. A.) 252 Fed. 21 33
Stromberg vs. California, 283 U. S. 359 35
Thornhill vs. Alabama, 310 U. S. 88, 98 ..... 15, 24
Thorwegan vs. King, 111 U. S. 549 14
Throckmorton vs. Holt, 180 U. S. 551 12
Union Pacific Coal Co. vs. U. S., 173 Fed. 737 (8 C. C. A.) 13
U. S. vs. Messinger, 68 F. 2d 234 (4 C. C. A.) 13, 14, 25

TREATISES

Wigmore, 3rd Ed., Sec. 726 27
Wigmore, 3rd Ed., Secs. 729, 2099 ..... 12, 27
Wigmore, 3rd Ed., Secs. 1040, 2099 ..... 12, 27

STATUTES

Criminal Code, Sections 32, 76 ..... 1, 5, 11, 14, 15, 23, 32
Judicial Code 240, (28 U. S. C. A., Sec. 347) 2, 16, 17
Rule XI of the Rules of Practice and Procedure 17

Supreme Court of the United States

OCTOBER TERM, 1940.

No. .....

J. E. PIERCE, PETITIONER,

VS.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND SUPPORTING BRIEF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

I.

SUMMARY STATEMENT OF MATTERS INVOLVED.

J. E. Pierce, petitioner herein, and E. H. Roach were convicted for alleged violations of Section 32 of the Criminal Code (18 U. S. C. A. Sec. 76), prohibiting the impersonation of officers or employees of the United States. The judgment of conviction was reversed (86 F. 2d 949).

On a second trial, Roach was acquitted and the jury disagreed as to petitioner.

The third trial resulted in the conviction of petitioner on fifteen counts of the indictment. Cumulative prison sentences, aggregating eight years, and fines, totaling $2,500, were imposed (R. 13, 14).

The Circuit Court of Appeals affirmed the judgment of conviction. Its opinion appears at pages 347-350 of the record and in the advance sheets of the Federal Reporter for December 30, 1940 (115 F. 2d 399).

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended.

Petitioner was editor of the Huntsville (Alabama) Daily Register. His prosecution arose out of an advertising campaign, conducted by him in behalf of that paper, this campaign beginning prior to the passage of the Tennessee Valley Authority Act of 1933 (R. 137, 140).

The indictment charged that petitioner pretended to be a representative of the Government, selling "T. V. A. Units" and the Government sought to prove that he represented himself to be an officer of the Government or a representative of the T. V. A. engaged in the sale of T. V. A. Units.

It was the insistence of petitioner and Roach who accompanied him throughout his canvass that they never heard the expression "T. V. A. Units" until the arrest of petitioner in this case and like testimony was given by witnesses who heard in the aggregate several hundred of the sales talks made by petitioner in the solicitation of funds for publicity advertising in his newspaper (R. 215, 217, 223, 235, 250, 257).

Funds were solicited for page advertisements of counties, and the advertising campaign had been under way for more than two years (R. 139) when petitioner was arrested in Gibson County, Tennessee, on a state charge. This arrest was made at the instance of a small group of citizens whose demand for a refund of money paid peti-

tioner had been refused (R. 169). It resulted in the federal prosecution.

In the canvass of 17 counties in North Alabama, 46 counties in Mississippi, and 11 counties in Tennessee, that preceded the arrest of petitioner in Gibson County, Tennessee, several thousand subscriptions had been obtained and thousands of copies of the paper, containing the page advertisements, had been mailed to sponsors in the territory canvassed, including the mailing of hundreds of copies to citizens of counties contiguous to Gibson (R. 139-154).

Funds were solicited and obtained not only from individuals, including bankers, lawyers, doctors, merchants, but also from colleges, governing authorities of municipalities, including a town in a county adjoining Gibson, and from Chambers of Commerce (R. 196).

Every check, and payments were usually made by check, whether written by petitioner or by the subscriber, was made payable to the Huntsville Daily Register or bearer and showed in its face that it was given for "advertising" (R. 37, 208, 165, 73).

In every instance where petitioner obtained funds, whether in cash or by check, a receipt on the printed bill head of the Huntsville Daily Register was then and there given the person making the payment. This receipt, showing the purpose for which the funds were paid and received, was written in the presence of the contributor and was signed by petitioner as editor of the paper (R. 46, 51, 53, 54, 60, 66, 69, 70, 75, 85, 100, 104, 109, 130, 132).

To illustrate the plan, and show the character of work done in other counties, copies of the Huntsville Daily Register, containing page advertisements of counties, bound together in a bundle called the "dummy," were exhibited to every prospect, and in connection with this demonstration the advantages of community organization, cooperation and publicity in securing "lower taxes, better roads and cheaper power" were emphasized by petitioner (R. 40, 49, 63, 67, 77, 88, 98, 105, 124).

To comprehend this plan required the prospect to listen and to observe, and it is the contention of petitioner that the failure of some of the Government witnesses either to observe or to listen with due care explains the impression or conclusion, apparently formed in a few instances, that petitioner was acting in an official capacity—a conclusion in direct conflict with that formed by the overwhelming majority of the persons who heard the plan presented in a sales talk of such uniformity that it was designated as a "canned sales talk" by persons who heard it more than once (R. 259, 260).

As to the expression "T. V. A. Units," Roach thus testified:

> "The first time I ever heard the expression 'T. V. A. Units' was after we were arrested in Gibson County. Such an expression was never used by Mr. Pierce in my presence in the presentation of his plan. He did speak of 'units of advertising'—was divided into 240 units—the plan called for the public underwriting $1,400 and the newspaper underwriting $1,000" (R. 263).

To the same effect was the testimony of disinterested witnesses who in the aggregate heard hundreds of presentations of the plan (R. 206, 207, 218, 222, 230, 237, 251).

Petitioner will now state more specifically the matters involved in the petition.

(a)

The Indictment.

In each count of the indictment, it was charged that Petitioner, J. E. Pierce, and E. H. Roach, with intent to defraud, did "falsely assume and pretend to be officers of the United States, to-wit, representatives of the Government selling T. V. A. units" (R. 1-11).

(b)

Statute Involved.

The indictment charged violation of Section 32 of the Criminal Code (U. S. C. A., Title 18, Section 76). This statute was amended on February 28, 1938, the amendment being made after the reversal of this case and subsequent to all transactions involved in the indictment. The statute, with the amendment of February 28, 1938, shown in bold type, is as follows:

> "Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, **or under the authority of any corporation owned or controlled by the United States**, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department thereof, or any officer of the Government thereof, **or any corporation owned or controlled by the United States**, any money, paper document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both."

(c)

Theories of Parties.

On the first trial, it was the theory of the prosecution that the Tennessee Valley Authority was an "arm of the Government" or a "branch of the Government," and that an impersonation of officers or employees of that corporation constituted a violation of Section 32 of the Criminal Code (Petition for rehearing, p 2; R. 352).

At that trial, while denying that such officers or employees were impersonated, it was the contention of petitioner that the officers and agents of the Tennessee Valley

Authority were not included within the scope of the statute under consideration as it then existed.

This contention was sustained by the Court of Appeals but held to be inapplicable to the issues presented by the first appeal.

(d)

Holdings of Court of Appeals.

At the first trial, the court was not asked to instruct the jury as to the distinction, if any, between an impersonation of officers or employees of the Tennessee Valley Authority and those of the Government, but motion was made to quash the indictment and also to direct a verdict in favor of the defendants on the ground that the T. V. A. was a corporate entity distinct from the Government.

In his opinion, reversing the case, Judge Simon held that the indictment did not charge that petitioner and his co-defendant represented themselves to be "agents or employees of the Tennessee Valley Authority" but charged that they "assumed or pretended to be representatives of the Government" (86 F. 2d 951).

But notwithstanding the above holding, the Government at the subsequent trials developed its case on the theory that the T. V. A was an "arm of the Government" (R. 316), and, as will later be shown, Government witnesses made no distinction between the Government and the Tennessee Valley Authority.

In that situation, petitioner asked the trial court to instruct the jury directly and explicitly that the "Tennessee Valley Authority, commonly designated as the T. V. A., although an instrumentality of Government, is a corporate entity separate and distinct from the Government itself, and the officers and employees of that corporation are not within the scope of the statute on which the indictment in this case is based" (R. 308).

This request, set out in full in Question 2, *infra*, was refused.

Speaking of that refusal, Judge Arant, in his opinion affirming the case, said:

> "Appellant claims that the testimony of government witnesses could be construed to mean that appellant represented himself to be an officer or employee of the Tennessee Valley Authority and insists that the general charge will be examined in vain for the semblance of a suggestion that officers or employees of the Tennessee Valley Authority were not within the purview of the statute. So vital a matter, he contends, should have been called to the attention of the jury in an explicit instruction.
>
> We disagree. The charge was explicit, and the conviction was supported by evidence that the appellant held himself out not as an officer or employee of the Tennessee Valley Authority, but as 'acting under the authority of the United States Government,' which is quite a different thing and clearly within the condemnation of the statute" (Opinion, 115 F 2d 401; R. 347).

To sustain petitioner's contention, not controverted by the opinion, that there is not a tinge nor a color of either statement or suggestion in the general charge that the T. V. A. was a corporate entity, separate and distinct from the Government, reference is made to the charge (R. 294-308).

To show that the Government witnesses, regarding the Tennessee Valley Authority as identical with the Government, made no distinction in their testimony between that corporation and the Government, and also that most if not all of the Government proof, if accepted at its face value, showed a claimed connection with, or representation of, the T. V. A., and nothing more, we recite the Government testimony under each count of the indictment as to the claimed representations made by petitioner.

(e)

The Government Testimony.

With the exception of Count II, two counts, one under the first and the other under the second clause of Section 32 of the Criminal Code, were based on each of the several transactions in the indictment, a single witness testifying to the transaction in each count or pair of counts, as follows:

Count II. "He (Pierce) approached me and claimed he was selling TVA units * * * I wouldn't be positive about the Government" (R. 52, 55, 56) is the testimony of the Government witness Witt in regard to the transaction in Count II. It appears without dispute that this same witness at a preliminary hearing two days after the transaction testified that he did not remember petitioner saying anything about the Government (R. 288).

Counts IV and V: "We represent TVA, Muscle Shoals power and sell TVA units of $10 a unit * * * We put up dollar for dollar each dollar the people put up" is the language attributed to Pierce by the Government witness Utley (R. 59) who alone of all the witnesses claimed to be able to repeat the language used by petitioner.

Counts IX and X: "We are here representing the Government, trying to sell TVA units," is the language attributed to Pierce by the Government witness Clarence Lucky. This witness also testified that he did not look at the receipt, given him by petitioner, till he got home, that he paid little or no attention to the use of newspapers in demonstrating the plan, and that he was stating his "understanding without any ability to recall the exact language that was used" (R. 110-112).

Counts XI and XII: "He (Pierce) * * * told me that he was representing the Government selling TVA" are the words attributed to Pierce by the witness Simpson.

This witness further testified that petitioner did not claim to be an "officer of the United States Government" but said that he was "working in the interest of the Government promoting cheaper power" (R. 78). At the preliminary hearing, as appears without question in the record, this witness thus testified:

> "They (petitioner and Roach) said they was in here working in the interest of the TVA" (R. 78, 79).

Counts XIV and XV: "He (Pierce) told me a bit about TVA and wanted to sell me some units and I didn't feel able to buy them and he told me that they would match dollar for dollar—

> Q. Who would match dollar for dollar?
> A. The Government, and I bought two units in TVA"

is the testimony of Frank Blackman, regarding the transaction in Counts XIV and XV (R. 66). This witness, at the preliminary hearing, testified that Pierce said he was "working in the interest of Muscle Shoals project" (R. 70, 288). On cross examination at the trial herein he testified that Pierce did not say the "Government" would match contributions, that he actually said "We will match dollar for dollar," which the witness construed as a reference to the Government because petitioner said he was "selling TVA units and Muscle Shoals power" (R. 71).

Counts XVI and XVII: "He (Pierce) said I am representing TVA in their project to get to the rural communities in the TVA territory" is the language of the witness Conyers (R. 120). At the former trial, this witness testified thus: "* * * he (Pierce) told me it was all in *furtherance of this TVA program the Government was so interested in*" (R. 128).

Counts XVIII and XIX: "He (Pierce) said he was representing TVA and wanted to sell me units in the

TVA" is the language attributed to Pierce by the Government witness Robinson. Robinson further testified that when he asked Pierce if the $20 subscription the witness made would result in his getting cheaper lights, petitioner responded, "No, it is for advertising" (R. 88). Robinson at the first trial did not use the word "government" in detailing the statement made to him by Pierce, but in his testimony at the second trial added that word to the statement he attributed to petitioner. At the third trial, he thus explained the addition of the word "government," saying: "The reason I put in the Government was that he (Pierce) was selling TVA and I knew that was a Government project" (R. 316, 317).

Counts XX and XXI: "He (Pierce) told me the purpose he was there for—there in the interest of the Government, selling the people of Crockett County TVA units or stock" (R. 91), is the statement attributed to Pierce by the Government witness Cherry. At the second trial undertaking to detail this statement, the witness made no mention of the word "Government" but said: "He (Pierce) said he was there to sell some TVA units or stock to us farmers of Crockett County and other counties and insisted on me taking $100 worth of units—stock in TVA" (R. 330).

(f)

Questions Presented.

(1) Whether there is any substantial evidence that petitioner in any transaction, made the basis of a count in the indictment, falsely impersonated an "officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof," this question being duly raised by motion for a directed verdict, made at the conclusion of the evidence for the Government and renewed at the conclusion of all the evidence, exception being taken to the action of the Court in overruling this motion (Tr. 293).

(2) Whether the Court erred in refusing, over the objection and exception of petitioner, a special request duly tendered by the defendant and relating to a material matter not included in the Court's general charge, this request being as follows, to-wit:

> "At the request of the defendant, the Court further instructs the Jury that the Tennessee Valley Authority, commonly designated as T. V. A., although an instrumentality of the Federal Government, is a corporate entity, separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the T. V. A., or was connected with the T. V. A. as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment" (R. 308).

(3) Whether a mere verbal declaration of a connection with, or representation of, the Federal Government that is not accompanied by any act in keeping with the pretense constitutes an offense under Section 32 of the Criminal Code. Or, otherwise stated, where no badge or insignia of office is displayed, does not the completion of the offense require the performance or attempted performance of an actual or colorable official act?

(4) Whether an indictment which charges in general terms that the accused did falsely pretend to be "officers of the United States, to-wit, representatives of the Government selling T. V. A. units * * * and take upon themselves to act as such" is sufficiently descriptive of any actual or apparent official act to charge the offense denounced by either clause of Section 32 of the Criminal Code. (This question is included in order that it might be

relied on at the hearing if the writ should be granted and further reference thereto will not be made in the petition or the brief.)

II.

REASONS WHY THE WRIT SHOULD BE GRANTED.

(1) The evidence upon which the Circuit Court of Appeals affirmed the judgment is so uncertain, indefinite, conjectural, weak and inconclusive that it can not under the federal rule raise a question of fact upon the material issue in the case, to-wit, the alleged false impersonation of officers of the United States Government, and therefore the District Court should have directed a verdict in favor of petitioner, and after that Court failed to do so, the Court of Appeals should have reversed the judgment.

In failing to do so the Circuit Court of Appeals disregarded the well settled principle that testimony regarding oral statements, and especially where the exact language of the declarant is a material consideration, is inherently weak and dangerous (*Throckmorton* v. *Holt*, 180 U. S. 551; *American Bell Telephone et al.* v. *People Telephone Co. et al.*, 22 Fed. 309), and the equally well settled principle that in determining the impression sought to be conveyed by a transaction involving words and acts the principle of "completeness" should be applied both to "recollection" and "observation" (Wigmore, 3rd Ed., Secs. 729, 2099) and the intent of the party making the statement or giving a demonstration determined by the "whole impression or effect of what has been said or done" (Wigmore, 3rd Ed., Secs. 1040, 2099).

No Government witness, testifying to a transaction involved in the indictment, whose testimony even by a strained construction thereof could be interpreted as evidence that petitioner represented himself to be an of-

ficer or agent of the federal government, claimed to be able to state the exact language used by petitioner or to have observed with care the things done by petitioner in presenting his plan. In holding that such testimony, which did not represent the tenor of petitioner's utterance as a whole but mere fragments of it, was sufficient to overcome positive opposing testimony and otherwise unimpeached documentary evidence, the Court of Appeals disregarded the federal rule with respect to the quantum of evidence necessary to support a verdict as pronounced by this Court in *Gunning* v. *Cooley*, 281 U. S. 90, 50 S. Ct. 231, 74 L. Ed. 720.

(1a) The Government testimony, relating to transactions in the indictment, consists largely of impressions and conclusions, which, when considered in connection with all the facts and circumstances, are as consistent with a misunderstanding on the part of the witnesses as with a misrepresentation by petitioner, and therefore the Court of Appeals in affirming the conviction disregarded the settled federal rule that peremptory instructions should be given where the evidence, viewed as a whole, is as consistent with innocence as with guilt. *Union Pacific Coal Co.* v. *U. S.*, 173 Fed. 737 (8 C. C. A.), *Nicola* v. *U. S.*, 72 F. 2d 780 (3 C. C. A.).

(2) In view of the mass of evidence relating to the Tennessee Valley Authority, so vital a point as the distinction between that corporation and a department of the government should have been covered by a clear and explicit instruction. *Bird* v. *United States*, 100 U. S. 356, 45 L. Ed. 570; *Little* v. *U. S.*, 73 F. 2d 861 (C. C. A. 10); *U. S.* v. *Messinger*, 68 F. 2d 234 (C. C. A. 4).

Bird v. *United States* holds that the defendant "has a right to a full statement of the law from the Court" and that the charge should "bring into view the relations of the particular evidence adduced to the particular issue involved."

Little v. *U. S.* and *U. S.* v. *Messinger*, *supra*, hold in substance that the defendant's side of the case, or the converse of the government's theory, should, upon request, be submitted to the jury.

The Court of Appeals in approving the refusal of the District Court explicitly to instruct the jury that the Tennessee Valley Authority was a corporate entity, separate and distinct from the Government, rendered a decision in conflict with the above cases and a decision that so far departs from the usual and accepted course of judicial proceedings as to call for an exercise of the supervisory powers of this court.

(3) Not withstanding the decision of the Court of Appeals on the first appeal that the Tennessee Valley Authority was a corporate entity, separate and distinct from the Government, and that the indictment did not allege the impersonation of officers and agents of that corporation, the general charge of the trial court in the instant case will be searched in vain for even a hint or an intimation that officers and employees of the Tennessee Valley Authority were excluded from the class of officers and employees whose impersonation was prohibited by Section 32 of the Criminal Code.

In that situation the refusal of the special request, a correct statement of the law that was applicable to the evidence introduced by the Government, was reversible error, and in sanctioning that refusal the Court of Appeals disregarded the rule pronounced by this Court in *Thorwegan* v. *King*, 111 U. S. 549.

(4) The indictment herein, as construed by the Court of Appeals in its opinion reversing the first conviction (86 F. 2d 949), did not charge petitioner with an impersonation of officers or agents of the Tennessee Valley Authority. The Government evidence, however, or the most of it, if it showed the impersonation of any officials only established an impersonation of officers or agents of the Tennessee Valley Authority. This

being true, the refusal of the special request under consideration impliedly authorized the jury to convict on a charge not made in the indictment, and conviction on a charge not made is a sheer denial of due process of law. *Thornhill* v. *Alabama*, 310 U. S. 88, 98. In sanctioning a conviction which within the range of reasonable possibility may have been made on a charge not embraced in the indictment, the Court of Appeals so far departed from the usual and accepted course of judicial proceedings as to justify an exercise of the supervisory powers of this Court.

(5) In holding on the first appeal (86 F. 2d 949), and thus establishing it as the law of the case, that a mere verbal declaration of a general or undefined federal agency or employment constitutes the false impersonation that is an essential element of both offenses denounced by Section 32 of the Criminal Code, the Court of Appeals decided a federal question of importance not theretofore adjudicated by this Court and in a way that is probably untenable and in conflict with the decisions of this Court in *Barnow* v. *U. S.*, 239 U. S. 74, and *Lamar* v. *U. S.*, 241 U. S. 103. These cases hold that the overt act necessary to the completion of either offense denounced by the statute (Cr. Code 32) need not be a legally authorized act but must be an act *in keeping with the pretense and done in the pretended character of a federal officer.*

No act in keeping with a pretense of federal authority, if such a claim was made, is shown to have been committed by petitioner in any transaction involved in the indictment. On the contrary, petitioner only collected funds as a representative of a newspaper and the receipt given when money was paid to and received by him expressly so shows.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals for the Sixth

Judicial Circuit, commanding that court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket: Number 8352, Criminal, J. E. Pierce v. United States of America, to the end that said case may be reviewed and determined by this Court as provided by Section 240 of the Judicial Code (U. S. C. A., Title 18, Section 347), and that the judgment of the Court of Appeals for the Sixth Circuit be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem right and proper.

L. E. GWINN,

Counsel for Petitioner,
J. E. Pierce.

BRIEF IN SUPPORT OF PETITION.

I.

Opinion of Lower Courts

No opinion at the last trial was filed by the District Court. The opinion of the Court of Appeals (R.) is published in 115 F. 2d 399.

II.

Jurisdiction.

The jurisdiction of this court is invoked under the provisions of Section 240 of the Judicial Code (28 U. S. C. A., Sec. 347), as amended, and by the Act of Congress of March 1, 1934, and Rule XI of the Rules of Practice and Procedure promulgated by this court May 7, 1934.

The judgment of the Court of Appeals was entered November 15, 1940.

Petition for rehearing, filed December 10, 1940, was denied February 4, 1941, and this petition for certiorari is filed within the thirty day period thereafter allowed by the rules of this Court.

The transcript of the record in the case, including the proceedings in the Court of Appeals, has been filed herein in accordance with Rule 38 of this Court.

III.

Specifications of Error.

The errors here complained of have been set out in substance under "Questions Presented," in the petition, and will, therefore, not be specifically set out here.

IV.

The Facts.

The uncontroverted evidence shows:

(1) That petitioner, a newspaper man with more than forty years experience (R. 135), was editor of the Huntsville (Alabama) Daily Register, a paper with a small circulation, published in the Muscle Shoals territory, and Vice President of the corporation that published the paper (R. 135).

(2) That prior to the passage of the Tennessee Valley Authority Act of 1933, this paper began a campaign in which funds were solicited for page advertisements of counties or groups of counties (R. 137, 140), and petitioner, having been long identified with civic enterprises, including road improvements and power development in rural communities, was designated to conduct that campaign (R. 137, 138). As early as 1921, petitioner's activity in behalf of better roads and the "development of North Alabama through the use of Muscle Shoals power" had won high praise from newspapers in that territory (R. 137). At the time of the trial herein he was Vice President and a member of the Advisory Council of the United States Good Roads Association (R. 138).

(3) The campaign had been under way and with marked success, for more than two years when the transactions involved in the indictment were had in Gibson and Crockett Counties, Tennessee. This prior canvass had covered 17 counties in North Alabama, 46 counties in Mississippi, and 11 counties in western Tennessee (R. 139, 140, 141).

(4) The plan involved the raising of $1,400 to pay the cost of the page advertisement of the county or group of counties to which it was devoted. The advertisement set forth the natural and potential resources of the county,

contained the names of the sponsors, and in small spaces used for that purpose advertised any property they had for sale. This page advertisement was published in twenty different but not consecutive issues of the paper. In so far as it was an advertisement of the county, it was rewritten for each publication, but no change was made in that part of the advertisement devoted to the sponsors (R. 143). These advertisements were prepared and published in accordance with the agreements of petitioner (R. 145, 149).

(5) At regular rates, the series of page advertisements of a county or group of counties would have cost $2,400. As a basis on which to solicit funds, this cost was divided into 240 units of $10 each, and it was stated to the prospective contributors that petitioner or his paper would take care of $1,000 of the $2,400, and publish the advertisement if the county would raise $1,400 (R. 144), this being solicited on the basis of $10 a unit. No subscription for less than ten dollars was accepted (R. 151).

(6) The only credential or evidence of authority presented by the petitioner in his talks to Government witnesses, or anyone else, was a letter of identification and information, *written on the stationery of the Huntsville Daily Register, stating the objects and purposes of the work being done by the petitioner's office*, and read to the persons from whom funds were sought or obtained (R. 139, 227, 236, 261, 262). This letter, omitting the heading, is as follows:

"Huntsville, Alabama
April 21, 1934

"To Whom It May Concern:

"This will introduce J. E. Pierce, Editor and Vice-President of the Huntsville Daily Register, Huntsville, Alabama.

"As a matter of information and identification, Mr. Pierce is 53-years of age, 6 ft. tall, weighs 196-lbs. on the average, prematurely gray, wears glasses, car-

ries cane, and while presenting pleasing personality and stately appearance, he is modest and of a retiring disposition.

"Mr. Pierce erected one 12-story office building in Huntsville, he is one of the Directors of the magnificent 12-story hotel here, one of the owners of a 7-story bank building, a substantial farmer, is a Deacon in the First Baptist Church and is actively identified in Chamber of Commerce and civic work generally.

"We have assigned Mr. Pierce to the task of completing the Muscle Shoals series of page newspape. advertisements (20-in number) for each group of one or more counties from the Georgia line to the Mississippi River.

"In this work, Mr. Pierce is authorized to transact any and all business pertaining to the interest of this company, including the endorsement of checks, drafts and other items made payable to order or otherwise in favor of this company. Banks, bankers and or trust company or companies, as well as individuals, are requested to so recognize his authority as Vice-President and or Editor of the Huntsville Daily Register.

"Any courtesies you may extend Mr. Pierce in the fine public work in which he is engaged will be appreciated on the part of the company, and thanking you, we are

Respectfully yours,

The Huntsville Daily Register,
The Register Publishing Company,
By 'Wm. H. Pierce' (Signed)
President"

(R. 35, 36.)

(7) In all transactions involved in the indictment and in every instance ir which money was paid to Pierce, he then and there, as a part of the transaction, gave to the party making the payment a receipt showing the purpose for which it was paid and the capacity in which it was received. This receipt was on the printed bill head or statement of the Huntsville Daily Register. It was written in the presence of the subscriber or the con-

tributor and signed by Pierce as Editor of the paper (R. 37, 46, 48, 49, 51, 53, 54, 60, 66, 69, 70, 74, 75, 85, 93, 100, 104, 109, 122, 130, 132).

Some of the witnesses testified that this receipt, written in their presence, was folded by petitioner when he handed it to the witness; others testified that it was open (R.). As to the folding thereof we quote from the testimony of one of the Government witnesses as follows:

> "Q. I wasn't asking you what you bought; I was asking you if you had any difficulty in understanding, when you examined the receipt, what you had paid your money for?
> A. No, sir; not after I read the receipt, I didn't.
> Q. And that receipt was given you at the time you gave him the check?
> A. Yes, sir.
> Q. All there as a part of the same transaction?
> A. That is right.
> Q. And even though it was folded, unfolding it just took an instant of time; didn't it?
> A. That is right; yes, sir" (R. 104).

(8) In a majority of cases payment was made by check and in every instance this check, whether written by the subscriber or by petitioner, was made payable to the "Huntsville Daily Register or Bearer" and showed on its face that it was given for "*advertising*" (R. 28, 66, 73, 74, 92, 103, 109, 128, 129).

(9) To illustrate the plan and show the prospect the character of work done in other counties, copies of the Huntsville Daily Register, carrying page advertisements of counties previously canvassed, were exhibited by petitioner to every Government witness testifying to a transaction involved in the indictment and to all the other witnesses, and all the witnesses admitted that such a demonstration was made in their presence by petitioner and the witness Roach as a part of the transaction in which funds were solicited (R. 25, 27, 34, 47, 51, 57, 65, 68, 75, 86, 97, 105, 110, 124, 126, 132).

(10) The verdict under each count rests on the recollection of a single witness who heard the presentation of the plan but once, and the record discloses no instance where any person who heard more than one presentation thereof formed an impression or conclusion that petitioner was acting in a federal official capacity. On the contrary, the record affirmatively shows that all persons who heard more than one presentation of the plan clearly understood that petitioner was soliciting funds for community advertising, and also that the response to its general presentation without the slightest claim or pretense of federal authority was such that from fifty to eighty per cent of the persons solicited made subscriptions (R. 206, 216, 218, 222, 227, 252).

(11) No Government witness, testifying to a transaction involved in the indictment, who formed the impression or conclusion that petitioner was connected with the Government claimed that he was able to repeat the exact language that was spoken with respect to the Government (R. 51, 69, 70, 77, 78, 86, 97, 110, 112, 123). As to other matters, such as the reading of the letter of identification, observation of what was written on checks they signed or on receipts given to them, and the exhibitions of the newspapers in demonstrating the plan, the testimony of these witnesses is a chorus of "I did not notice," "I paid no particular attention," and like statements (R. 40, 47, 57, 78, 105, 110, 111, 112, 126, 128). None of them claimed to have made any specific inquiry of petitioner as to the character of his office or employment nor to have asked or been told by petitioner what a "T. V. A. unit" was. The record does disclose, however, that petitioner was occasionally asked if he represented the Government but also that when such a question was asked he promptly and positively stated that he was not connected with the Government in any capacity (R. 167, 210, 230, 242, 257).

(12) The distribution of the papers, containing the page advertisements prepared by petitioner, were not re-

stricted to the regular circulation of the papers that carried the advertisements but copies thereof were sent to members of Congress, Governors, Chambers of Commerce and Advertising Bureaus, etc., throughout the country. Among favorable comments made on the character of these advertisements was a letter from Senator Capper of Kansas (R. 156); a resolution by the Arkansas State Legislature (R. 160), and the statement by a national organization of advertising experts, located in Chicago, that one of the "booster pages" for Gibson county was the "outstanding" advertisement of its class in June, 1935, that was discovered by that group after an examination of more than a thousand newspapers during that month (R. 148). These advertisements, like the sales talks, stressed the importance of community organization, co-operation and publicity to secure tax reduction, road improvement and power development, and petitioner testified that he believed that his program would aid in the accomplishment of these objectives (R. 202, 264).

V.

The Refusal of Petitioner's Special Request Was a Denial of Due Process of Law.

It was the theory of the prosecution at the first trial that the impersonation of officers or employees of the Tennessee Valley Authority constituted a violation of Section 32 of the Criminal Code (R. 316).

It was the contention of the defendants that the Tennessee Valley Authority, created by the 1933 Act (___) was a corporate entity, separate and distinct from the Government, and that therefore the officers and employees of that corporation were excluded from the purview of the section of the Criminal Code under consideration.

The Court of Appeals, reversing the first conviction, sustained the contention of the defendants but held that the indictment did not charge an impersonation of officers

or employees of the Tennessee Valley Authority (86 F. 2d 949).

Upon that construction of the indictment, the conviction of petitioner for an impersonation of officers or employees of the Tennessee Valley Authority—an offense not charged in the indictment—would be a sheer denial of due process of law. *Thornhill* v. *Alabama*, 310 U. S. 88.

As most of the Government testimony related to the alleged statements of petitioner that he was representing the T. V. A., and as the charge nowhere drew any line nor stated any distinction between the impersonation of officers or employees of the T. V. A. and officers or employees of the Government, the refusal of the special request, making clear that distinction, licensed the jury to convict on a charge not made in the indictment as construed by the Court of Appeals.

But that is not all.

Section 32 of the Criminal Code at the time of the transactions involved in this case did not prohibit the impersonation of officers or employees of a corporation of the character of the T. V. A., and its terms could not be extended by construction to include kindred acts that may have been as reprehensible as those denounced by that statute. The principle stated is too well settled to require citation of authorities.

In 1938, about three years after the commission of the offenses alleged in the indictment herein, the statute was amended so as to bring within its operation the impersonation of officers or employees of a corporation owned or controlled by the Government. But *ex post facto* legislation should not be given a retroactive effect by *de facto* judicial evasion.

The refusal of the special request under consideration is such an evasion with such a result.

No line being drawn by the general charge between the impersonation of officers of the Government and those of the T. V. A., the jurors, if they believed that petitioner

claimed to represent the T. V. A., would have returned a verdict of guilty under any count where such a representation was made although there was no evidence that petitioner also claimed to represent the Government. This is not a matter of speculation, as that is precisely what was done by the jury, which returned a verdict of guilty under all counts of the indictment, including those where the witness did not claim that defendant made any reference whatever to the Federal Government.

In view of the mass of evidence relating to the Tennessee Valley Authority, so vital a point as the distinction between that corporation and a department of the government should have been covered by a clear and explicit instruction.

Bird v. *United States*, 100 U. S. 356, 45 L. Ed. 570.
Little v. *U. S.*, 73 F. 2d 861 (C. C. A. 10).
U. S. v. *Messinger*, 68 F. 2d 234 (C. C. A. 4).
Bates County v. *Wills*, 239 Fed. 785 (C. C. A. 8).
Northern Central Coal Co. v. *Hughes*, 224 Fed. 57 (C. C. A. 8).

If we construe its opinion correctly, the Court of Appeals did not hold that the general charge drew any line between impersonation of officers or employees of the Government and those of the Tennessee Valley Authority, nor hold that the special request did not correctly state the law on the point therein stated but held in effect that its refusal was harmless error.

Such a conclusion was a jury-invading speculation.

How could that court determine what verdict would have been rendered under proper instructions without invading the province of the jury which is the "fact finding body in criminal cases" (*Patton* v. *U. S.*, 281 U. S. 276)?

Upon what theory consistent with the principle stated could the Court of Appeals hold that the verdict would not have been affected by an explicit instruction as to the effect and the limitations of the evidence relating to statements claimed to have been made by petitioner that he represented or was connected with the T. V. A.?

And upon what theory other than the failure of the jury to make any distinction between an impersonation of officers or employees of the Tennessee Valley Authority and those of the Government can the verdict on the transaction with Conyers (Counts XVI and XVII) be explained when there is not a whisper of evidence that petitioner in such transaction claimed any representation of or connection with any official agency except the T. V. A. (R. 120)?

Here is what Conyers testified:

> "He (Pierce) said, I am representing TVA in their project to get to the rural communities in the TVA territory. He said that the TVA has a proposition in which they propose to meet the counties in a subscription of something that he called units. He said each county, according to its area and population is asked to do so much, and the TVA, we are meeting that with TVA funds" (R. 120).

Other evidence might be quoted to show that the jurors, accepting the theory of the prosecution, could infer, and did infer, that the T. V. A. was part of the Government and that no distinction need be made between an impersonation of Government officials and the impersonation of T. V. A. employees in determining the guilt or innocence of the defendant (R. 316) but the foregoing is believed to be sufficient. This distinction was the determinative factor in nine counts and a material consideration in the others. This being true, the refusal of the special request was error as to all counts. *Lamento* v. *United States*, 4 F. 2d 900 (C. C. A. 8).

VI.

The Motion for a Directed Verdict Should Have Been Sustained.

In the opinion, the Court of Appeals states that a "witness who with positiveness could recount all the de-

tails surrounding an event that had occurred four years previously would be either a genius or unworthy of belief. 3 Wigmore on Evidence (3rd Ed., 1940), No. 726" (pp. 2-3).

The principle thus stated is sound. But the ability of a single witness to recall the exact language used by appellant, and the connection in which it was used, is the basis of the verdict under each count of the indictment.

An application of the principle stated, together with another principle, recognized by the same distinguished author, would seem to preclude any holding that there was substantial evidence to support the conviction under any count. We refer to the principle of "Completeness" as applied both to "Recollection" and "Observation" (Wigmore, 3rd Ed., No. 729, No. 2099), of a transaction involving both words and acts.

In attempting to narrate the words and acts of appellant, no witness other than Utley, who had obviously memorized his testimony at the former trial (R. 59, 62), claimed to be able to state the substance of the things said and done by appellant, considered as a whole, in presenting his plan. Utley's testimony does not establish any violation of the statute.

The impression which appellant intended to convey to any witness should be determined "not by individual words or phrases alone, but by the whole impression or effect of what has been said or done" (Wigmore, 3rd Ed., No. 1040).

"'Substance' though not reproducing the precise words, should at least represent the tenor of the utterance as a whole, and not mere fragments of it" (Wigmore, No. 2099).

Bearing in mind that an understanding of the plan presented by appellant required the prospect to exercise both his faculties of hearing and observation, that almost without exception government witnesses, testifying to transactions involved in the indictment, testified that they paid little or no attention to the newspaper demonstration,

made by appellant to every prospect as a part of the presentation of the plan, or to the exhibition or reading of letters to them, it seems quite clear that such testimony, neither as to details nor substance, meets the test of "completeness" that should be applied in determining its probative force.

The evidence conclusively shows that there was no material difference in the presentations of the plan to persons from whom appellant solicited funds, that the overwhelming majority of persons to whom it was presented clearly understood that appellant was acting in the capacity of a newspaper publisher, and that the comparatively few who understood otherwise reached that conclusion as the result of careless listening and deficiency of observation for which appellant was not responsible.

If tested by the foregoing principles, which we regard as sound and fair, the testimony of the government does not present a substantial conflict with the positive testimony of appellant and his witnesses. The case should therefore be controlled by the rule pronounced by the Supreme Court in *Gunning* v. *Cooley*, 281 U. S. 90, which rejects the scintilla rule and holds that where the evidence on one side is so overwhelming as to leave no room to doubt what the fact is, the case should not be submitted to the jury.

Further discussing the evidence, we state certain propositions, supported by the record which we think conclusively show that peremptory instructions should have been given to the jury.

(A)

It is indisputably established by the record that Pierce in the general course of the extensive campaign conducted by him was able to sell and did sell his plan to an overwhelming majority of the several thousand persons from whom he solicited subscriptions without the slightest pretense of Federal authority and that any

confusion of his publicity advertising with an officially sponsored T. V. A. or Government program only occurred in exceptional cases and then without the knowledge or design of Pierce.

The testimony of various persons who accompanied petitioner and Roach in the campaign for the solicitation of funds, and who stand unimpeached in the record, clearly sustains the above proposition. These witnesses are: Walter Brock (R. 206) and Dewey Claunch (R. 257), who accompanied defendant in the canvass of Mississippi counties immediately preceding the campaign in West Tennessee; R. E. Ross (R. 215), Ernest N. Drake (R. 217), Artie B. Dancer (R. 222), Ernest Caldwell (R. 235), J. H. Caughlin (R. 235) and E. C. Harrell (R. 250), who accompanied petitioner and Roach in the canvass of West Tennessee counties.

These ten witnesses accompanied petitioner for various intervals of time, ranging from three days to three months, and in the aggregate heard not less than a thousand (probably more) of the sales talks as made to all classes of persons and under conditions identical with those existing in Gibson and Crockett Counties, but not one of them ever heard the expression "TVA units" until the arrest of defendant in the present case; and each testified that petitioner was engaged in a campaign in which funds were solicited for newspaper advertising and that the plan was presented without any claim or pretense of Federal authority or official connection with the Tennessee Valley Authority.

There are two uncontroverted facts in connection with the general course of the business as conducted by Pierce which are destructive of the Government's theory of a general scheme to defraud the public through a false pretense of Federal authority. One of these is equally destructive of any theory that such was done in exceptional cases.

First: Petitioner as a rule was accompanied in his canvass of a county by some local resident of good char-

acter and standing, who was familiar with the roads of the county, and usually selected on recommendation of the Sheriff, or the Chamber of Commerce if such existed in the county. This party did not participate in the campaign further than to show the roads of the county and aid in locating the residences of persons on whom Pierce planned to call. But he either heard or had the opportunity to hear what was said in presenting the plan, and too often to be mistaken as to the nature of the plan. If Pierce was engaged in the execution of a plan to swindle the public it is inherently improbable that he would have followed the course pursued with respect to the employment of residents of the counties canvassed who would be available as witnesses to prove the representations that were made.

Second: Pierce, in every instance where money was received by him, gave the contributor a receipt written in his presence, showing the exact purpose for which the money was paid. If petitioner had obtained funds as a Federal Officer, a reading of the receipt meant immediate discovery and probably exposure of the fraud, and while Pierce was still engaged in a canvass of the county. Is this the course of a clever swindler, executing a scheme to defraud? Would any man with intelligence above that of a plain idiot perpetrate a dangerous fraud and as a part of the fraudulent transaction serve a written notice thereof on the victim of the fraud?

But that is what Pierce did if he obtained money in the pretended character of a Federal official for a T. V. A. program and at the same time executed a receipt showing that the money was paid to a newspaper for subscription and advertising. It is said however, that the receipts were folded. What of it? Did that afford any substantial protection? How long did it take to unfold one of these receipts?

The answers to these questions may be found in the testimony of the Government witness, M. R. Lewis; speak-

ing with reference to the receipt given him by the defendant this witness testified:

Q. And you had no difficulty in understanding it was for a newspaper?

* * * * * * *

Q. And that receipt was given you at the time you gave him the check?

A. Yes, sir.

Q. All there as a part of the same transaction?

A. That is right.

Q. And even though it was folded, unfolding it just took an instant of time; didn't it?

A. That is right; yes, sir (R. 104).

(B)

The testimony of the Government consists of hasty, impressions and unwarranted conclusions that bear no reasonable relation to the things said and done by defendant in presenting his plan and therefore do not present a substantial conflict with the direct and positive evidence that supports the theory of the defendant.

The proposition stated is clearly shown by an examination of the testimony of the Government witness Anderson, first witness for the Government. Anderson did not testify to any transaction involved in the indictment, but to a similar transaction. He testified that he understood that petitioner was a representative of the Government although he could not state the exact language used to convey that impression (R. 30, 32, 33).

On the first trial, this witness had testified with emphasis that he did not see nor sign the check for $100 given to petitioner at the conclusion of his sales talk to Anderson, but that this check was written and signed by the bookkeeper in the store of the witness. It developed, however, that Anderson personally signed the check, and he acknowledged his signature when it was produced, but that is not the point here stressed.

The check, written by Anderson's bookkeeper in a plain, bold hand, and signed by Anderson, was, upon instructions of petitioner to the bookkeeper in Anderson's presence, made payable to the newspaper and showed on its face that it was for "advertising." The bookkeeper, a Government witness, expressly so testified (R. 37). Furthermore, a receipt, executed by the paper through petitioner as its editor, was executed and delivered to the bookkeeper, contemporaneous with the signing of the check by Anderson (R. 37), these things being done in Anderson's private office. Obviously, any misunderstanding of the plan was the fault of the witness and neither designed by nor known to petitioner.

VII.

A Mere Verbal Declaration of a General or Undefined Federal Agency or Employment Unaccompanied by Any Apparent or Colorable Official Act Does Not Constitute the False Personation That Is an Essential Element of Both Offenses Denounced by Section 32 of the Federal Criminal Code.

In making the foregoing contention, we do not insist that the statute restricts either offense to the impersonation of a particular official or the performance of legally authorized acts. The statute may be violated although the assumed office or authority has no legal existence. But the statute requires something more than words to constitute a false impersonation. It does this in express terms: "Whoever, with intent to defraud * * *, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States * * *, and shall take upon himself to act as such, or shall in such pretended character demand or obtain any money, etc., * * * shall be fined or imprisoned" * * *.

False personation is the "gist" of both offenses punishable under this statute. *Little* v. *United States*, (9 C. C. A.) 169 Fed. 620; *Ferguson* v. *United States*, (10 C. C.

A.) 293 Fed. 361; *Read* v. *United States*, (2 C. C. A.) 252 Fed. 21. The prohibition of the first clause of the act is carried forward into the second by the use of the words "in such pretended character." *Lamar* v. *United States*, 241 U. S. 103.

In *King* v. *United States*, (5 C. C. A.) 279 Fed. 103, the Court thus construed an indictment which charged that the accused "did then and there in such pretended character place the said (naming the parties) under arrest":

> "The word 'pretend' in the connection in which it is used in the indictment, means the putting forward of a false appearance of being officers * * * the simulating or feigning to be officers."

In *Cronin* v. *People*, 80 Michigan 646, cited with approval by the Supreme Court in the Barnow case as to the construction of the clause, "And take upon himself to act," etc., the Michigan court, construing a state statute almost identical with the Federal statute, said:

> "The statute does not attempt to punish any person for falsely assuming to be any of the officers named in the section, but for assuming and taking upon himself to act or officiate in any office or place of authority."

How could any person "take upon himself to act or officiate in any office or place of authority," unless he exhibited some badge or insignia of office or performed a colorable official act? This need not be a legally authorized act, but it must be an act done in the "falsely assumed character" (*Lamar* v. *United States*, *supra*) and an act in "keeping with the pretense." *United States* v. *Barnow*, *supra*.

In the instant case, petitioner exhibited no badges, executed no purported official receipts, did not have in his possession any "T. V. A. Stock" or "T. V. A. Units," or anything purporting to be such, or bearing any Government label or signature. All he did was obviously the

act of a private citizen, not a Government official. Every check taken was payable to a privately owned and privately published newspaper, and its receipt was issued for all funds received by Pierce. If petitioner verbally claimed to be a Federal official, the acts done were destructive of that pretense.

The precise point here involved was not before the court in the Barnow case, but there is nothing in that decision in conflict with the construction of the statute for which we here contend. In that case, the accused was charged with selling a set of books, entitled "Messages and Papers of the Presidents," as a pretended agent of the United States, the purchaser believing that the Government would receive the money for the publication. It was held that this constituted a violation of the statute, although there was no person authorized to make such sales for the Government and the office, or place of authority, in which the accused assumed to act or officiate, had no legal existence. But "Messages and Papers of the Presidents" was a set of books that had been published under the authority of the Congress (*Bush* v. *United States*, 196 Fed. 579). Its possession and sale under a claim of Federal authority was an apparent official act.

In the instant case, however, it is alleged that the defendants claimed to be "representatives of the Government T. V. A. Units." There was no such thing as "T. V. A. Units," and claiming to sell something, if such a claim was made, that had neither legal nor actual existence, and was neither shown nor described to the purchaser, nor in the evidence, presents a radically different situation from the act of selling "Messages and Papers of the Presidents"—apparently a Government publication. One is a mere verbal declaration; the other a colorable official act.

Where there is no impersonation of a particular individual, known to be a Federal officer by the victim of the intended fraud, it is difficult to understand just how a non-existent Federal office or employment, or a general

Federal agency, could be impersonated or assumed without displaying a badge or insignia of authority or performing an apparent official act. It is the pretended official act that brings the case within the operation of the statute.

Conclusion.

Considered as a whole, the evidence herein is as consistent with a misunderstanding on the part of government witnesses as to the capacity in which petitioner acted as it is with a fraudulent misstatement by him of that capacity. This being true, the trial court, following the familiar rule that where all the substantial evidence is as consistent with innocence as with guilt, should have sustained the motion for a directed verdict. To hold otherwise is to do lip service to the substantial evidence rule but apply the scintilla rule rejected by this court in *Canning* v. *Cooley*, 281 U. S. 90.

Furthermore, it can not be determined on this record whether petitioner was convicted for a claimed representation of, or connection with, the T. V. A., not a federal offense at the time of the transactions involved in this case, or for an impersonation of officers or employees of the government. In that situation, the basis of the verdict being a matter of speculation, the conviction was a denial of due process of law. *Stromberg* v. *California*, 283 U. S. 359.

Licensing or sanctioning a speculative verdict, this being the necessary result of the refusal of the special request, presents a question of importance if due process is to remain a living force and not become an empty theory in the conduct of criminal prosecutions.

Respectfully submitted,

L. E. GWINN,
Attorney for Petitioner.

FILE COPY

Office - Supreme Court, U.S.
FILED
MAR 29 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~833~~ 36

J. E. PIERCE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF

L. E. GWINN,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940

No. 833

J. E. FIERCE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF

May It Please the Court:

I.

When the petition herein, and brief in support thereof, were filed, petitioner did not have access to the report of the Committee that considered the Act of February 28, 1938, extending the scope of Section 32 of the Criminal Code (U. S. Code, Title 18, Section 76), so that it would include officers or employes of corporations owned or controlled by the United States.

Having subsequently examined the report (No. 1703) of the Judiciary Committee of the House of Representatives

with respect to that amendment, petitioner calls it to the attention of the Court, and particularly the letter of the Acting Attorney General, included in that report, to-wit:

> "Office of the Attorney General,
> Washington, D. C., May 7, 1937.
>
> Hon. William B. Bankhead,
> The Speaker, House of Representatives,
> Washington, D. C.
>
> My Dear Mr. Speaker: The existing law makes it a crime to impersonate any officer or employee of the United States with intent to defraud (Criminal Code, Sec. 32, U. S. Code, Title 18, Sec. 76). It seems desirable to extend the scope of the act so as to penalize impersonation of officers and employees of Government-owned and Government-controlled corporations.
>
> The maximum penalty that may now be imposed for the offense of impersonation is imprisonment for a term of 3 years and a fine of $1,000. In aggravated cases a greater punishment may prove suitable, and I suggest increasing the maximum penalty to imprisonment for 5 years and a fine of $5,000.
>
> A bill to effectuate this purpose is submitted herewith.
>
> Sincerely yours,
>
> Joseph B. Keenan,
> *Acting Attorney General.*"

The bill (S. 2381) as it passed the Senate contained both proposals of the Attorney General, but upon recommendation of the House Judiciary Committee the penalties of existing law were restored. This recommendation was as follows:

> "Your committee concurs in the recommendation of the Attorney General with regard to extension of the statute, but is of the opinion that the existing penalties are sufficient. The committee amendment, therefore, restores the penalties in the bill to those of present law."

The Tennessee Valley Authority Act of 1933 created a *corporation* owned and controlled by the Government (U. S. Code, Title 16, Ch. 12a, Sec. 831) but prior to the amendment of Section 32 by the Act of 1939, the impersonation of officers and employees of a Government-owned or Government-controlled corporation was not an offense under that statute.

The transactions involved in this case were charged to have been committed in 1935.

Government witnesses, testifying to transactions involved in the indictment, did not claim to be able to repeat the exact language used by petitioner with respect to the Government (R. 51, 69, 70, 77, 78, 86, 97, 110, 112, 123).

The basis of the conclusions of these witnesses that petitioner was representing the Government was their construction of statements relating to the T.V.A. and cheaper power which they regarded as government enterprises, and in their testimony they made no distinction between the Government and the T.V.A.

Instances include:

The testimony of Simpson, relating to counts 11 and 12, that petitioner claimed to be "working in the interest of the Government" (R. 73, 78). This witness testified at a preliminary hearing when the matter was fresh in his recollection that petitioner claimed to be "working in the interest of T.V.A." (R. 78, 79, 288); that of Blackman, testifying to the transaction in Counts 14 and 15, that he reached the conclusion that petitioner represented the Government because the letters "TVA" constituted the "big printed top" across the page of one of the newspapers exhibited to the witness (R. 71); that of Robinson, testifying in regard to Counts 18 and 19, that he quoted petitioner as saying that he represented the Government because the latter claimed

to be "selling T.V.A." which the witness considered a "government project" (R. 316, 317).

To detail further testimony, showing that Government witnesses made no distinction between the T.V.A. and the Government, and their conception that the T.V.A. and the Government were identical or that the former was a department of the latter, would serve no useful purpose. It is too clear to admit of reasonable controversy that the conclusion of any of these witnesses, not one of whom claimed to be able to state the exact language used by petitioner, rested largely, if not entirely, upon his belief that there was no difference between a representative of the Government and a representative of the Tennessee Valley Authority.

But that distinction was of vital importance in determining the guilt or innocence of petitioner, and in view of the fact that the bulk of the Government testimony was restricted to purported claims by petitioner that he was connected with, or represented the T.V.A.; the fact that the Government tried the case on the theory that the T.V.A. was a branch or arm of the Government (R. 316), and the further fact that the trial court refused to direct a verdict in favor of petitioner on counts where there was not a scintilla of evidence that petitioner claimed to be connected with, or to represent the Government, or that he even mentioned the Government, unless a claimed connection with, or representation of, the T.V.A. was equivalent to a claim that he was acting under federal authority, it is clear of doubt that the special request, drawing a line between an impersonation of officers or agents of the United States and the impersonation of officers or employees of the Tennessee Valley Authority, if such was made, should have been given.

The general charge did not suggest such a distinction. Therefore to refuse the special request was to license the

jury to convict for an offense that was made such by an *ex post facto* statute.

There is no substantial evidence, as petitioner construes the record, that officers or agents of the Tennessee Valley Authority were impersonated by him, but if so, Section 32 of the Criminal Code, as it existed in 1935, could not be extended by judicial construction to include such an impersonation without violating principles that are fundamental in our system of jurisprudence. *Fasulo* v. *U. S.* 272 U. S. 620.

II.

To divide the cost of a series of page advertisements into units and to solicit funds for the payment therefor on the basis of such units, is a plan that could be submitted to a person of ordinary experience without insulting his intelligence. But to pretend to be selling "TVA units", as charged in the indictment, such units having neither actual nor potential existence, and to make that claim to substantial farmers, merchants and physicians, would be a procedure that is difficult to explain on any theory consistent with common sense on the part of the claimant or ordinary intelligence on the part of the person to whom it was made. Consequently, if such a claim was made to persons of the classes mentioned, we think it would fall within the operation of the rule that there is no false pretense where the representation is "*absurd or irrational or where the party alleged to be defrauded had the means of detection at hand.*" *Wharton on Criminal Law*, 12th Edition, Section 1456, Pages 1742, 1743.

Here the persons alleged to have been defrauded not only had the "means of detection at hand" *but actually had such means in hand*, this being a plain and unambiguous receipt given each subscriber by petitioner, and every per-

son thus furnished a receipt which he could then and there read was fully capable of understanding its meaning.

III.

Petitioner, at page 31 of his brief herein, emphasizes the extent to which the Government testimony consists of hasty impressions and unwarranted conclusions.

A few additional facts and circumstances are hereinafter mentioned that tend to support the contention stated.

Many of the Government witnesses testified that T.V.A. and cheaper power "meant the same thing to them." (R. 78, 47)

The testimony of petitioner's witness Bringle is illuminating as to this confusion or identification of different concepts and its probable consequence as reflected in the evidence. We quote therefrom as follows:

> "Mr. Pierce asked me then if I wasn't an advocate [illegible] roads and TVA or something to that effect, and I told him I was.
>
> "Q. In that connection did you make any inquiry as to what capacity he was there in?
>
> "A. Him and myself discussed different things as to him, and sometime in this conversation I asked him if he was connected with the Government, and he turned and told me. 'Don't get me wrong, Judge, I don't represent the Government in any capacity.'
>
> * * * * * * *
>
> "Q. You say something was said about cheaper power or TVA. Do you remember the exact language on that point?
>
> "A. No, sir, I do not, Mr. Gwinn, because if he said cheaper power, I naturally connected with TVA, and if he had said TVA I would have connected it up with cheaper power." (R. 210)

Further illustrating the conclusions, sometimes absurd, to which a prior concept, a faulty recollection, or careless listening may lead, reference is made to the testimony of the Government witness Luckey that petitioner claimed to have been acquainted with Andrew Johnson (R. 112), the basis thereof being petitioner's statement that Oscar Johnson, one of the nation's leading agriculturists, had subscribed to his program of community advertising (R. 135).

Petitioner became acquainted with President Roosevelt when the latter was Assistant Secretary of the Navy (R. 135, 139). In praising the power objectives of the Roosevelt Administration, petitioner sometimes referred to this acquaintance (R. 240). Petitioner's letter of identification was signed by his son as president of the corporation that published the Huntsville Daily Register (R. 36). Two of the Government witnesses, neither, however, testifying to a transaction involved in the indictment, to whom this letter was read, stated that they thought it was signed by the President of the United States (R. 35, 131). The parts of the letter which these witnesses identified as having been read to them clearly show that there was no ground for such a conclusion (R. 35, 139).

According to one of the Government witnesses when demand was made that petitioner refund the money paid him by another Government witness, he refused on the ground that he had sent the money to "*Washington*" (R. 61). But the witness making the demand testified that petitioner refused on the ground that he has sent the money to "*Alabama*" (R. 65).

There are three questions that have been emphasized in this supplemental brief, to-wit:

(1) The conviction of petitioner without any substantial evidence of the commission by him of a criminal or a wrongful act.

(2) The extension of Section 32 of the Criminal Code as it existed in 1935 to include acts not within its scope but which the court apparently thought should be punished. On this point, as the record shows, the trial judge was of the opinion that the impersonation of officers or employees of the Tennessee Valley Authority was within the scope of the act, and the Government continued to try the case on that theory despite the adverse ruling of the Court of Appeals (R. 316, 317).

(3) Actually, if not theoretically, the conviction of petitioner under an *ex post facto* law.

If the public interest requires that courts in the imposition of punishment keep within the limits of the law, and the protection of the constitutional rights of the citizen is a matter of general importance, then it is respectfully submitted that the petition states a proper case for granting the writ of certiorari.

L. E. Gwinn,
Attorney for Petitioner.

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 4 1941
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~833~~ 36

J. E. PIERCE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER.

L. E. GWINN,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 833

J. E. PIERCE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER.

As the record is voluminous, certain misleading statements in the Government brief seem to call for a reply.

I.

At page 7 of that brief it is said:

> "While the checks in those cases bore on their face the words 'For advertising' in petitioner's handwriting, three of the witnesses stated positively that those words were not on the checks when they signed them (R. 67, 92-93, 122).

Pertinent to the foregoing statement is the testimony of each of these three witnesses that he did not observe to whom the check was payable nor read it further than to

observe the amount for which it was payable (R. 73, 98, 99, 122, 128, 129).

II.

With respect to the refused special request, the excerpt from the charge, set out at pages 13 and 14 of the Government brief, taken from its context, is quite misleading.

The court had instructed the jury in substance that petitioner would be guilty if he claimed to represent the Government "or some department thereof" (R. 303), or claimed to have been "acting under the authority" of the Government (R. 305).

There was testimony that petitioner *referred* to the T. V. A. in his sales talks and that frequent *references* to the T. V. A. appeared in newspapers exhibited, and some testimony that petitioner claimed that he was "working in the interest of the Government" (R. 306).

The instructions at page 306, quoted in part by the Government brief, simply told the jury that a "*reference*" to the T. V. A. should not be considered as evidence of a false claim or pretense of Federal authority unless made for the purpose of inducing such belief on the part of the person to whom the representation was made, and the same instruction was also given with reference to the testimony that petitioner claimed to have been "working in the interest of the Government" (R. 306), but this instruction did not draw any line between the Government and the T. V. A. nor suggest that a false impersonation of an officer or agent of the T. V. A. did not constitute the offense for which petitioner was being tried.

There is, of course, a distinction between a "*reference*" to the Government or the T. V. A. and a claim to be an officer or an agent of either, and the instruction italicized at page 14 of the Government brief and related instructions simply told the jury that a "reference" to either was

not a false impersonation unless designed to convey the impression that petitioner was acting in an official capacity.

The qualification which the Government now insists (Br. 14) should have been included in the special request, to-wit, that any reference by petitioner to the T. V. A., if intended to convey the impression that he was an officer of the Government, would constitute a violation of the statute, was recognized and the rule applicable thereto expressly stated in the part of the charge italicized at page 14 of the Government brief. Having been stated in the general charge, there was no reason for its reiteration in the special request.

It was the contention of the Government that the "T. V. A. is an authority of the United States" (Petition for Rehearing, page 2); that of petitioner that the T. V. A. was a corporate entity separate and distinct from the Government, but the charge does not deal specifically with these contentions and, as set out in our original petition, the bulk of the Government's evidence was restricted to a claimed connection with or a representation of the Tennessee Valley Authority.

Respectfully submitted,

L. E. GWINN,
Attorney for Petitioner.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 36.

J. E. PIERCE, PETITIONER,

VS.

UNITED STATES OF AMERICA.

ASSIGNMENT OF ERROR, BRIEF AND ARGUMENT FOR PETITIONER.

L. E. GWINN,
Attorney for Petitioner.

INDEX

Opinion Below 1

Jurisdiction 1

Statement of the Case 2

(a) General preliminary statement 2

(b) Statute involved 5

(c) The indictment 6

(d) Questions presented 6

(e) Holdings of court of appeals 8

(f) The government testimony 10

(g) The facts 12

Specification of Errors 23

Argument—

I. The motion for a directed verdict should have been sustained 26

(a) The general features of the sales talks made by petitioner in the solicitation of funds were practically the same, this uniformity being established by the testimony of both witnesses for the government and the defendant 28

(b) It is indisputably established by the record that Pierce in the general course of the extensive campaign conducted by him was able to sell and did sell his plan to an overwhelming majority of the several thousand persons from whom he solicited subscriptions without the slightest pretense of federal authority and that any confusion of his publicity advertising with an officially sponsored T. V. A. or government program only occurred in exceptional cases and then without the knowledge or design of Pierce 31

(c) The testimony of the government consists of hasty impressions and unwarranted conclusions that bear no reasonable relation to the things said and done by defendant in presenting his plan and therefore do not present a substantial conflict with the direct and positive evidence that supports the theory of the defendant 34

II. The refusal of petitioner's special request, a correct statement of the law, strictly applicable to material facts, and not included in the court's general charge, was a denial of due process of law 42

Special request not included in general charge 46

(1) A comparison of the special request (R. 308) with the general charge (R. 294-307) shows that the points presented in the special request are not included in the general charge 46

Requested instruction applicable to evidence 51

(2) In view of the mass of evidence relating to the Tennessee Valley Authority, so vital a point as the distinction between that corporation and a department of the government should have been covered by a clear and explicit instruction 51

Refusal of special request plain error 55

(3) Petitioner's special request was a correct statement of the law. It related to a material matter that was not included in the court's general charge. Its refusal was therefore plain error 55

III. A mere declaration of a general undefined federal agency or employment unaccompanied by any apparent or colorable official act does not constitute the false personation that is an essential element of both offenses denounced by Section 32 of the Federal Criminal Code 58

Conclusion 61

TABLE OF CASES

American Bell Telephone et al. vs. People's Telephone Co. et al., 22 Fed. 309 40
Barnow vs. U. S., 239 U. S. 74 59, 60
Bates County vs. Wills, 239 Fed. 785 (C. C. A. 4) 51
Bird vs. United States, 180 U. S. 356, 45 L. Ed. 570 51, 52, 53, 55, 57
Boyett vs. U. S., 47 F. 2d 482 (C. C. A. 5) 57
Broadway Mfg. Co. vs. Leavenworth Terminal Ry. Bridge Co., 81 Kan. 616, 106 Pac. 1034, 28 L. R. A. (N. S.) 156 53, 56
Bush vs. United States, 196 Fed. 579 61
Calton vs. People, 103 U. S. 83, 32 L. Ed. 870 57
Commonwealth vs. Jordon, 328 Pa. 439, 196 Atl., p. 10 57
Cronin vs. People, 80 Mich. 646 59
Dunn vs. United States, 284 U. S. 390 63
Falulo vs. United States, 272 U. S. 620, 71 L. Ed. 443 58
Ferguson vs. United States, (10 C. C. A.) 293 Fed. 361 59
Gunning vs. Cooley, 281 U. S. 90, 50 S. Ct. 231, 74 L. Ed. 720 28, 40, 62
Kinard vs. U. S., (D. C. App.) 96 F. 2d 522 57
King vs. United States, (5 C. C. A.) 279 Fed. 103 59
Kriemer vs. U. S., 11 F. 2d 722 (C. C. A. 2) 57
Lamar vs. United States, 241 U. S. 103 59, 60
Lamento vs. United States, 4 F. 2d 900 (C. C. A. 8) 54, 57
Little vs. United States, (9 C. C. A.) 169 Fed. 620 59
Little vs. U. S., 73 F. 2d 861, 866, 867 (C. C. A. 10) 51, 53, 55, 56
McDonald vs. U. S., 241 Fed. 793, 799 50, 57
Meadows vs. U. S., 82 F. 2d 88 (D. C. App.) 57
Nicola vs. U. S., 72 F. 2d 780 (3 C. C. A.) 41
Northern Central Coal Co. vs. Hughes, 224 Fed. 57 (C. C. A. 8) 51
Oras vs. U. S., 67 F. 2d 463 (C. C. A. 9) 57
Patton vs. U. S., 281 U. S. 276 52

Pearson vs. State, 143 Tenn. 385, 397, 226 S. W. 588 57
Read vs. United States, (2 C. C. A.) 252 Fed. 21 59
Strader vs. U. S., 72 F. 2d 589 (10 C. C. A.) 57
Stromberg vs. California, 283 U. S. 359, 75 L. Ed. 1117 56, 62
Thornhill vs. Alabama, 310 U. S. 88 44
Thorwegan vs. King, 111 U. S. 549, 28 L. Ed. 515 55
Throckmorton vs. Holt, 180 U. S. 551 40
Union Pacific Coal Co. vs. U. S., 173 Fed. 737 (8 C. C. A.) 41
U. S. vs. Messinger, 68 F. 2d 234 (C. C. A. 4) 51
Western Union Tel. Co. vs. Morris, 105 Fed. 49, 53 (C. C. A. 8) 50

CODES

Criminal Code, Section 32 (18 U. S. C. A., Sec. 76) 2, 5, 6, 7, 8, 25, 26, 40, 42, 43, 44, 46, 47, 49, 55, 58
Judicial Code, Section 240 (a) 2

RULES

Rules of Practice and Procedure in Criminal Cases, Rule XI 2

ACTS

Tennessee Valley Authority Act of 1933 (U. S. C., Tit. 16, Ch. 12 a, Sec. 831) 3, 43, 46

TEXTBOOKS

Wharton on Criminal Law, 12th Edition, Section 1456, pages 1742, 1743 41
Wigmore, 3rd Ed., Secs. 729, 2099 27
Wigmore, 3rd Ed., Sec. 1040 27
3 Wigmore on Evidence (3rd Ed., 1940), Sec. 726 (pp. 2-3) 27

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 36.

J. E. PIERCE, PETITIONER,

VS.

UNITED STATES OF AMERICA.

ASSIGNMENT OF ERROR, BRIEF AND ARGUMENT FOR PETITIONER.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 347-350) is reported in 115 F. 2d 399.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 15, 1940.

Petition for rehearing, filed December 10, 1940, was denied February 4, 1941.

Petition for certiorari to review the judgment of the Circuit Court of Appeals was duly filed in this Court, being case No. 833, October Term, 1940, and granted on April 14, 1941.

The jurisdiction of this court was invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and the writ of certiorari having been granted thereunder, the case is before this court for determination by it with the same power and authority, and with like effect, as if brought here by unrestricted writ of error or appeal. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this court May 7, 1934.

STATEMENT OF THE CASE.

J. E. Pierce, petitioner herein, and E. H. Roach were convicted for alleged violations of Section 32 of the Criminal Code (18 U. S. C. A., Sec. 76), prohibiting the impersonation of officers or employees of the United States. The judgment of conviction was reversed (86 F. 2d 949).

On a second trial, Roach was acquitted and the jury disagreed as to petitioner.

The third trial resulted in the conviction of petitioner on fifteen counts of the indictment. Cumulative prison sentences, aggregating eight years, and fines, totaling $3,500, were imposed (R. 13, 14).

The Circuit Court of Appeals affirmed the judgment of conviction.

(a)

General Preliminary Statement.

Petitioner was editor of the Huntsville (Alabama) Daily Register. His prosecution arose out of an advertising campaign, conducted by him in behalf of that paper,

this campaign beginning prior to the passage of the Tennessee Valley Authority Act of 1933 (R. 137, 140).

The indictment charged that petitioner pretended to be a representative of the Government, selling "T. V. A. Units" and the Government sought to prove that he represented himself to be an officer of the Government or a *representative of the T. V. A. engaged in the sale of "T. V. A. Units."*

It was the contention of petitioner that he was engaged in an advertising campaign, soliciting funds for community advertising, and that he did not claim to have any connection whatever with either the Government or the Tennessee Valley Authority.

Funds were solicited for page advertisements of counties, and the advertising campaign had been under way for more than two years (R. 139) when petitioner was arrested in Gibson County, Tennessee, on a state charge. This arrest was made at the instance of a small group of citizens whose demand for a refund of money paid petitioner had been refused (R. 169). It resulted in the federal prosecution.

In the canvass of 17 counties in North Alabama, 46 counties in Mississippi, and 11 counties in Tennessee, that preceded the arrest of petitioner in Gibson County, Tennessee, several thousand subscriptions had been obtained and thousands of copies of the paper, containing the page advertisements, had been mailed to sponsors in the territory canvassed, including the mailing of hundreds of copies to citizens of counties contiguous to Gibson (R. 139-154).

Funds were solicited and obtained not only from individuals, including bankers, lawyers, doctors, merchants, but also from colleges, governing authorities of municipalities, including a town in a county adjoining Gibson, and from Chambers of Commerce (R. 196).

Every check, and payments were usually made by check, whether written by petitioner or by the subscriber, was made payable to the Huntsville Daily Register or bearer and showed in its face that it was given for "advertising" (R. 37, 208, 165, 73).

In every instance where petitioner obtained funds, whether in cash or by check, a receipt on the printed bill head of the Huntsville Daily Register was then and there given the person making the payment. This receipt, showing the purpose for which the funds were paid and received, was written in the presence of the contributor and was signed by petitioner as editor of the paper (R. 46, 51, 53, 60, 66, 69, 70, 75, 85, 100, 104, 109, 130, 132).

To illustrate the plan, and show the character of work done in other counties copies of the Huntsville Daily Register, containing page advertisements of counties, bound together in a bundle called the "dummy," were exhibited to every prospect, and in connection with this demonstration the advantages of community organization, co-operation and publicity in securing "lower taxes, better roads and cheaper power" were emphasized by petitioner (R. 40, 49, 63, 67, 77, 88, 98, 105, 124).

To comprehend this plan required the prospect to listen and to observe, and it is the contention of petitioner that the failure of some of the Government witnesses either to observe or to listen with due care explains the impression or conclusion, apparently formed in a few instances, that petitioner was acting in an official capacity —a conclusion in direct conflict with that formed by the overwhelming majority of the persons who heard the plan presented in a sales talk of such uniformity that it was designated as a "canned sales talk" by persons who heard it more than once (R. 259, 260).

As to the expression "T. V. A. Units," Roach thus testified.

"The first time I ever heard the expression 'T. V. A. Units' was after we were arrested in Gibson County. Such an expression was never used by Mr. Pierce in my presence in the presentation of his plan. He did not speak of 'units of advertising'—was divided into 250 units—the plan called for the public underwriting $1,400 and the newspaper underwriting $1,000" (R. 263).

To the same effect was the testimony of disinterested witnesses who in the aggregate heard hundreds of presentations of the plan (R. 206, 207, 218, 222, 230, 237, 251).

(b)

Statute Involved.

The indictment charged violation of Section 32 of the Criminal Code (U. S. C. A., Tit. 18, Sec. 76). This statute was amended on February 28, 1938, the amendment being made after the reversal of this case and subsequent to all transactions involved in the indictment. The statute, with the amendment of February 28, 1938, shown in bold type, is as follows:

"Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, **or under the authority of any corporation owned** or **controlled by the United States,** and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department thereof, or any officer of the Government thereof, **or any corporation owned or controlled by the United States,** any money, paper document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both."

(c)

The Indictment.

Eight of the counts on which convictions were had charged the offense created by the first provision of Section 32 of the Criminal Code and seven of the counts alleged the commission of the offense denounced by the second provision of that statute.

In each count of the indictment, it was charged that petitioner, J. E. Pierce, and E. E. Roach, with intent to defraud, did "falsely assume and pretend to be officers of the United States, to-wit, representatives of the Government selling T. V. A. Units," but no facts were recited to support the conclusion of the pleader.

Motion to quash and demurrer to the indictment, duly made, were overruled, but the Circuit Court of Appeals, while reversing the first judgment of conviction, held that the indictment sufficiently charged the two offenses denounced by the statute (86 F. 2d 949). Counsel for petitioner, acting on the assumption that this ruling established the law of the case in so far as it related to the new trial in the District Court, did not renew the demurrer and motion to quash but did point out the insufficiency of the indictment in the motion for a directed verdict (R. 291-292).

(d)

Questions Presented.

(1) Whether there is any substantial evidence that petitioner in any transaction, made the basis of a count in the indictment, falsely impersonated an "officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof," this question being duly raised by motion for a directed verdict, made at the conclusion of the evidence for the Government and renewed at the conclusion of all

the evidence, exception being taken to the action of the Court in overruling this motion (Tr. 293).

(2) Whether the Court erred in refusing, over the objection and exception of petitioner, a special request duly tendered by the defendant and relating to a material matter not included in the Court's general charge, this request being as follows, to-wit:

> "At the request of the def ndant, the Court further instructs the Jury that the Tennessee Valley Authority, commonly designated as T. V. A., although an instrumentality of the Federal Government, is a corporate entity, separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the T. V. A., or was connected with the T. V. A. as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment" (R. 308).

(3) Whether a mere verbal declaration of a connection with, or representation of, the Federal Government that is not accompanied by any act in keeping with the pretense constitutes an offense under Section 32 of the Criminal Code. Or, otherwise stated, where no badge or insignia of office is displayed, does not the completion of the offense require the performance or attempted performance of an actual or colorable official act?

(4) Whether an indictment which charges in general terms that the accused did falsely pretend to be "officers of the United States, to-wit, repre ntatives of the Government selling T. V. A. units * * * and take upon

themselves to act as such" is sufficiently descriptive of any actual or apparent official act to charge the offense denounced by either clause of Section 32 of the Criminal Code.

(e)

Holdings of Court of Appeals.

At the first trial, the court was not asked to instruct the jury as to the distinction, if any, between an impersonation of officers or employees of the Tennessee Valley Authority and those of the Government, but motion was made to quash the indictment and also to direct a verdict in favor of the defendants on the ground that the T. V. A. was a corporate entity distinct from the Government.

In his opinion, reversing the case, Judge Simon held that the indictment did not charge that petitioner and his co-defendant represented themselves to be "agents or employees of the Tennessee Valley Authority" but charged that they "assumed or pretended to be representatives of the Government" (86 F. 2d 951).

But notwithstanding the above holding, the Government at the subsequent trials developed its case on the theory that the T. V. A. was an "arm of the Government" (R. 316), and, as will later be shown, Government witnesses made no distinction between the Government and the Tennessee Valley Authority.

In that situation, petitioner asked the trial court to instruct the jury directly and explicitly that the "Tennessee Valley Authority, commonly designated as the T. V. A., although an instrumentality of Government, is a corporate entity separate and distinct from the Government itself, and the officers and employees of that corporation are not within the scope of the statute on which the indictment in this case is based" (R. 308).

But the instruction thus requested was refused (R. 308).

Speaking of that refusal, Judge Arant, in his opinion affirming the case, said:

> "Appellant claims that the testimony of government witnesses could be construed to mean that appellant represented himself to be an officer or employee of the Tennessee Valley Authority and insists that the general charge will be examined in vain for the semblance of a suggestion that officers or employees of the Tennessee Valley Authority were not within the purview of the statute. So vital a matter, he contends, should have been called to the attention of the jury in an explicit instruction.
>
> "We disagree. The charge was explicit, and the conviction was supported by evidence that the appellant held himself out not as an officer or employee of the Tennessee Valley Authority, but as 'acting under the authority of the United States Government,' which is quite a different thing and clearly within the condemnation of the statute" (Opinion, 115 F. 2d 401; R. 347).

To sustain petitioner's contention, not controverted by the opinion, that there is not a tinge nor a color of either statement or suggestion in the general charge that the T. V. A. was a corporate entity, separate and distinct from the Government, reference is made to the charge (R. 294-308).

To show that the Government witnesses, regarding the Tennessee Valley Authority as identical with the Government, made no distinction in their testimony between that corporation and the Government, and also that most if not all of the Government proof, if accepted at its face value, showed a claimed connection with, or representation of, the T. V. A., and nothing more, we recite the Government testimony under each count of the indictment as to the claimed representations made by petitioner.

(f)

The Government Testimony.

With the exception of Count II, two counts, one under the first and the other under the second clause of Section 32 of the Criminal Code, were based on each of the several transactions in the indictment, a single witness testifying to the transaction in each count or pair of counts, as follows:

Count II. "He (Pierce) approached me and claimed he was selling TVA units * * * I wouldn't be positive about the Government" (R. 52, 55, 56) is the testimony of the Government witness Witt in regard to the transaction in Count II. It appears without dispute that this same witness at a preliminary hearing two days after the transaction testified that he did not remember petitioner saying anything about the Government (R. 288).

Counts IV and V: "We represent TVA, Muscle Shoals power and sell TVA units of $10 a unit * * * We put up dollar for dollar each dollar the people put up" is the language attributed to Pierce by the Government witness Utley (R. 59) who alone of all the witnesses claimed to be able to repeat the language used by petitioner.

Counts IX and X: "We are here representing the Government, trying to sell TVA units," is the language attributed to Pierce by the Government witness Clarence Lucky. This witness also testified that he did not look at the receipt, given him by petitioner, till he got home, that he paid little or no attention to the use of newspapers in demonstrating the plan, and that he was stating his "understanding without any ability to recall the exact language that was used" (R. 110-112).

Counts XI and XII: "He (Pierce) * * * told me that he was representing the Government selling TVA" are the words attributed to Pierce by the witness Simpson.

This witness further testified that petitioner did not claim to be an "officer of the United States Government" but said that he was "working in the interest of the Government promoting cheaper power" (R. 78). At the preliminary hearing, as appears without question in the record, this witness thus testified:

> "They (petitioner and Roach) said they was in here working in the interest of the TVA" (R. 78, 79).

Counts XIV and XV: "He (Pierce) told me a bit about TVA and wanted to sell me some units and I didn't feel able to buy them and he told me that they would match dollar for dollar—

Q. Who would match dollar for dollar?
A. The Government, and I bought two units in TVA"

is the testimony of Frank Blackman regarding the transaction in Counts XIV and XV (R. 66). This witness, at the preliminary hearing, testified that Pierce said he was "working in the interest of Muscle Shoals project" (R. 70, 288). On cross examination at the trial herein he testified that Pierce did not say the "Government" would match contributions, that he actually said "We will match dollar for dollar," which the witness construed as a reference to the Government because petitioner said he was "selling TVA units and Muscle Shoals power" (R. 71).

Counts XVI and XVII: "He (Pierce) said I am representing TVA in their project to get to the rural communities in the TVA territory" is the language of the witness Conyers (R. 120). At the former trial, this witness testified thus: "* * * he (Pierce) told me it was all in *furtherance of this TVA program the Government was so interested in*" (R. 128).

Counts XVIII and XIX: "He (Pierce) said he was representing TVA and wanted to sell me units in the TVA" is the language attributed to Pierce by the Government witness Robinson. Robinson further testified

that when he asked Pierce if the $20 subscription the witness made would result in his getting cheaper lights, petitioner responded, "No, it is for advertising" (R. 88). Robinson at the first trial did not use the word "government" in detailing the statement made to him by Pierce, but in his testimony at the second trial added that word to the statement he attributed to petitioner. At the third trial, he thus explained the addition of the word "government," saying: "The reason I put in the Government was that he (Pierce) was selling TVA and I knew that was a Government project" (R. 316, 317).

Counts XX and XXI: "He (Pierce) told me the purpose he was there for—there in the interest of the Government, selling the people of Crockett County TVA units or stock" (R. 91), is the statement attributed to Pierce by the Government witness Cherry. At the second trial undertaking to detail this statement, the witness made no mention of the word "Government" but said: "He (Pierce) said he was there to sell some TVA units or stock to us farmers of Crockett County and other counties and insisted on me taking $100 worth of units—stock in TVA" (R. 330).

(g)

The Facts.

The uncontroverted evidence shows:

(1) That petitioner, a newspaper man with more than forty years' experience (R. 135), was editor of the Huntsville (Alabama) Daily Register, a paper with a small circulation, published in the Muscle Shoals territory, and Vice President of the corporation that published the paper (R. 135).

(2) That prior to the passage of the Tennessee Valley Authority Act of 1933, this paper began a campaign in which funds were solicited for page advertisements of

counties or groups of counties (R. 137, 140), and petitioner, having been long identified with civic enterprises, including road improvements and power development in rural communities, was designated to conduct that campaign (R. 137, 138). As early as 1921, petitioner's activity in behalf of better roads and the "development of North Alabama through the use of Muscle Shoals power" had won high praise from newspapers in that territory (R. 137). At the time of the trial herein he was Vice President and a member of the Advisory Council of the United States Good Roads Association (R. 138).

(3) The campaign had been under way, and with marked success, for more than two years when the transactions involved in the indictment were had in Gibson and Crockett Counties, Tennessee. This prior canvass had covered 17 counties in North Alabama, 46 counties in Mississippi, and 11 counties in western Tennessee (R. 139, 140, 141).

(4) The plan involved the raising of $1,400 to pay the cost of the page advertisement of the county or group of counties to which it was devoted. The advertisement set forth the natural and potential resources of the county, contained the names of the sponsors, and in small spaces used for that purpose advertised any property they had for sale. This page advertisement was published in twenty different but not consecutive issues of the paper. In so far as it was an advertisement of the county, it was rewritten for each publication, but no change was made in that part of the advertisement devoted to the sponsors (R. 143). These advertisements were prepared and published in accordance with the agreements of petitioner (R. 145, 149).

(5) At regular rates, the series of page advertisements of a county or group of counties would have cost $2,400. As a basis on which to solicit funds, this cost

was divided into 240 units of $10 each, and it was stated to the prospective contributors that petitioner or his paper would take care of $1,000 of the $2,400, and publish the advertisement if the county would raise $1,400 (R. 144), this being solicited on the basis of $10 a unit. No subscription for less than ten dollars was accepted (R. 151).

(6) The only credential or evidence of authority presented by the petitioner in his talks to Government witnesses, or anyone else, was a letter of identification and information, *written on the stationery of the Huntsville Daily Register, stating the objects and purposes of the work being done by the petitioner Pierce*, and read to the persons from whom funds were sought or obtained (R. 139, 227, 236, 261, 262). This letter, omitting the heading, is as follows:

"Huntsville, Alabama
April 21, 1934

"To Whom It May Concern:

"This will introduce J. E. Pierce, Editor and Vice-President of the Huntsville Daily Register, Huntsville, Alabama.

"As a matter of information and identification, Mr. Pierce is 53-years of age, 6 ft. tall, weighs 196-lbs. on the average, prematurely gray, wears glasses, carries cane, and while presenting pleasing personality and stately appearance, he is modest and of a retiring disposition.

"Mr. Pierce erected one 12-story office building in Huntsville, he is one of the Directors of the magnificent 12-story hotel here, one of the owners of a 7-story bank building, a substantial farmer, is a Deacon in the First Baptist Church and is actively identified in Chamber of Commerce and civic work generally.

"We have assigned Mr. Pierce to the task of completing the Muscle Shoals series of page newspaper advertisements (20-in number) for each group of one

or more counties from the Georgia line to the Mississippi River.

"In this work, Mr. Pierce is authorized to transact any and all business pertaining to the interest of this company, including the endorsement of checks, drafts and other items made payable to order or otherwise in favor of this company. Banks, bankers and or trust company or companies, as well as individuals, are requested to so recognize his authority as Vice-President and or Editor of the Huntsville Daily Register.

"Any courtesies you may extend Mr. Pierce in the fine public work in which he is engaged will be appreciated on the part of the company, and thanking you, we are

Respectfully yours,

The Huntsville Daily Register,
The Register Publishing Company,
By 'Wm. H. Pierce' (Signed)
President"

(R. 35, 36.)

(7) In all transactions involved in the indictment and in every instance in which money was paid to Pierce, he then and there, as a part of the transaction, gave to the party making the payment a receipt showing the purpose for which it was paid and the capacity in which it was received. This receipt was on the printed bill head or statement of the Huntsville Daily Register. It was written in the presence of the subscriber or the contributor and signed by Pierce as Editor of the paper (R. 37, 46, 48, 49, 51, 53, 54, 60, 66, 69, 70, 74, 75, 85, 93, 100, 104, 109, 122, 130, 132).

Some of the witnesses testified that this receipt, written in their presence, was folded by petitioner when he handed it to the witness; others testified that it was open. As to the folding thereof we quote from the testimony of one of the Government witnesses as follows:

"Q. I wasn't asking you what you bought; I was asking you if you had any difficulty in understanding, when you examined the receipt, what you had paid your money for?

A. No, sir; not after I read the receipt, I didn't.

Q. And that receipt was given you at the time you gave him the check?

A. Yes, sir.

Q. All there as a part of the same transaction?

A. That is right.

Q. And even though it was folded, unfolding it just took an instant of time; didn't it?

A. That is right; yes, sir" (R. 104).

(8) In a majority of cases payment was made by check and in every instance this check, whether written by the subscriber or by petitioner, was made payable to the "Huntsville Daily Register or Bearer" and showed on its face that it was given for *"advertising"* (R. 28, 66, 73, 74, 92, 103, 109, 128, 129).

(9) To illustrate the plan and show the prospect the character of work done in other counties copies of the Huntsville Daily Register, carrying page advertisements of counties previously canvassed, were exhibited by petitioner to every Government witness testifying to a transaction involved in the indictment and to all the other witnesses, and all the witnesses admitted that such a demonstration was made in their presence by petitioner and the witness Roach as a part of the transaction in which funds were solicited (R. 25, 27, 34, 47, 51, 57, 63, 68, 75, 86, 97, 105, 110, 124, 126, 132).

(10) The verdict under each count rests on the recollection of a single witness who heard the presentation of the plan but once, and the record discloses no instance where any person who heard more than one presentation thereof formed an impression or conclusion that petitioner was acting in a federal official capacity. On the contrary,

the record affirmatively shows that all persons who heard more than one presentation of the plan clearly understood that petitioner was soliciting funds for community advertising, and also that the response to its general presentation without the slightest claim or pretense of federal authority was such that from fifty to eighty per cent of the persons solicited made subscriptions (R. 206, 216, 218, 222, 227, 252).

(11) No Government witness, testifying to a transaction involved in the indictment, who formed the impression or conclusion that petitioner was connected with the Government claimed that he was able to repeat the exact language that was spoken with respect to the Government (R. 51, 69, 70, 77, 78, 86, 97, 110, 112, 123). As to other matters such as the reading of the letter of identification ovservation of what was written on checks they signed or on receipts given to them and the exhibitions of the newspapers in demonstrating the plan, the testimony of these witnesses is a chorus of "I did not notice," "I paid no particular attention," and like statements (R. 40, 47, 57, 78, 105, 110, 111, 112, 126, 128). None of them claimed to have made any specific inquiry of petitioner as to the character of his office or employment nor to have asked or been told by petitioner what a "T. V. A. unit" was. The record does disclose however, that petitioner was occasionally asked if he represented the Government but also that when such a question was asked he promptly and positively stated that he was not connected with the Government in any capacity (R. 167, 210, 230, 242, 257).

(12) The distribution of the papers, containing the page advertisements prepared by petitioner, was not restricted to the regular circulation of the papers that carried the advertisements but copies thereof were sent to members of Congress, Governors, Chambers of Commerce and Advertising Bureaus, etc., throughout the country

(R. 156, 157). Among favorable comments made on the character of these advertisements was a letter from Senator Capper of Kansas (R. 156); a resolution by the Arkansas State Legislature (R. 160), and the statement by a national organization of advertising experts, located in Chicago, that one of the "booster pages" for Gibson county was the "outstanding" advertisement of its class in June, 1935, that was discovered by that group after an examination of more than a thousand newspapers during that month (R. 148). These advertisements, like the sales talks, stressed the importance of community organization, co-operation and publicity to secure tax reduction, road improvement and power development, and petitioner testified that he believed that his program would aid in the accomplishment of these objectives (R. 202, 264).

With respect to the above mentioned "booster page," for Gibson County, published in June, 1935, we quote from its commendation by Harris C. Bennett, Director, Best Ideas Service of the Advertising Checking Bureau, Inc., Chicago, as follows:

> "Congratulations are in order, and the presentation of this kind of valuable publicity or advertising is in a class by itself. We know of no other newspaper rendering this service, but other papers might reasonably be interested in emulating same" (R. 148).

And this is the resolution adopted by the Arkansas Legislature:

> "Whereas, there has been placed on our desks a copy of a special edition of the Sheridan Headlight, edited and published by Representative Dalton V. Walker, and
>
> "Whereas, this edition contains much favorable publicity advertising the natural and potential resources of the State Of Arkansas, and
>
> "Whereas, this special edition has been distributed to the President of the United States, every

United States Senator, every Representative, every Governor in the United States and Chamber of Commerce of the United States, and

"Whereas, the State is receiving much favorable publicity and comment,

"Therefore, be it resolved that the House of Representatives of the 52nd General Assembly, commend Mr. Walker on his efforts in publishing this splendid edition, which has done much to advertise the State of Arkansas. Adopted February 15, 1939" (R. 159, 160).

And this is the certificate of the Editor of the Sheridan Headlight, showing petitioner's connection with the edition of the paper referred to in the foregoing resolution:

"This certifies that J. E. Pierce, Publicity Director of the Pierce Newspaper Publishers' Service, Huntsville, Alabama, has successfully completed a 20-page 10,000 copy special edition for us under date of February 2, 1939. The effort was a success in every way, so much so that the Arkansas Legislature adopted resolutions commending it, and letters of endorsement were received from United States Senators, Representatives, Governors of States and other sources" (R. 159).

(13) Throughout the campaign petitioner sought to arouse public sentiment and promote community organization for cheaper power, lower taxes and better roads (R. 186, 187-191). As to his own intent and belief that his campaign would aid in bringing about these objectives, defendant thus testified:

"Q. Mr. Pierce, I will ask you this question. From your experience as a newspaper man and from your experience in specialized advertising, state whether or not there is any yardstick by which you can definitely determine the value in dollars and cents of publicity advertising?

A. No, sir, advertising of that character has an intangible value. It can't be seen or felt except as

the results accrue after the publicity is over. As a merchant will advertise his wares, a community will do likewise.

Q. Mr. Pierce, in the presentation of your plan under which you state you solicited funds for advertising these various counties, state whether or not it was your belief that this campaign would have any bearing one way or another on the development of better roads and cheaper power?

A. Yes, sir. I was so saturated with the idea and believed in it so conclusively that I devoted practically my whole life to such campaigns, both editorially and in the sale of specialized advertising campaigns" (R. 202).

(14) The procedure followed and the things done by petitioner in presenting his advertising plan to persons from whom funds were solicited are thus stated by the witness Roach:

"There were but few of the sales talks made by Mr. Pierce in this canvass I did not hear. Mr. Pierce carried with him a letter of identification, stating who he was and with whom he was connected, and a post card folder of buildings in and around Huntsville. The letter shown me (Government Ex. ....), is either the original or a duplicate of that letter.

"When we entered a county, the usual procedure was to get someone familiar with the county to go with us, this being done to save time, and to get over the roads, so as to get to substantial people who were able to help promote a project of that kind. Mr. Pierce would show his letter of identification and go through his program. In making the canvass of Mississippi, we usually had county agents, but not in every instance. I was well acquainted in that state and traveled in it all my life.

"In practically all counties, we had a county agent. Usually we would contact the sheriff of the county and try to obtain the services of a deputy or former deputy sheriff on account of their familiarity with

the county and its people. These agents had an opportunity to hear the sales talks that were made. In many instances they did, sometimes they did not. The sales talk as made by Mr. Pierce from the time I commenced to work for him in August, 1934, until June, 1935, when we were arrested in Gibson County, was substantially uniform. It was practically a 'canned sales talk,' the difference being the reference to a man's business or profession, whether he was banker, farmer, lawyer or doctor.

"We called on the classes mentioned, including professors in universities. The University of the South at Sewanee was sold $100 of this publicity.

"In the presentation of his plan in Mississippi and in Tennessee, Mr. Pierce did not claim at any time I was present to be an officer or agent of the Federal Government, nor did he claim to have any official connection with either the Government or the TVA, but solicited funds, and so stated to the prospects, for advertising the natural and potential resources of the county; advocating cheaper power, lower taxes and better roads. Had he claimed to be a Government man or a representative of the Government or of TVA in my presence I would have quit automatically, because I did not believe that he was and he never made any such statement or representation in my presence.

"In our canvass of Gibson County, we first contacted the Sheriff, Mr. Robert Jones, and he recommended Mr. Ross to us. In Crockett County, we contacted Sheriff Montague, and I understand that he is dead.

"The post card folder, to which I have referred, is Government exhibit ..... . That folder, copies of the Huntsville Daily Register, and the letter of identification, were all the literature we had in the canvass of West Tennessee counties, including Gib-

son and Crockett. We did not have nor exhibit any maps. I did not share in the profits of sales, and had no interest except the compensation I received.

"Since the reversal of the conviction in the first trial of Mr. Pierce and myself, or beginning about three months thereafter, I have been employed by Mr. Pierce, assisting him in a canvass of Arkansas counties substantially the same as that conducted in Tennessee.

"Mr. Pierce no longer publishes the Huntsville Daily Register, but makes a connection with some local newspaper and advertises the natural and potential resources of the county, advocating cheaper power, lower taxes, better roads, and adequate drainage, this latter being added after we entered the State of Arkansas" (R. 259, 260).

SPECIFICATION OF ERRORS.

1. The Circuit Court of Appeals erred in overruling petitioner's second assignment of error in that Court (R. 332), complaining of the action of the trial court in overruling petitioner's motion for a directed verdict. Such motion, made at the conclusion of all the evidence, objection and exception being duly taken to the action of the trial court in overruling same, incorporated in the assignment of error referred to, reads as follows:

> "First, there is no evidence to support a verdict;
>
> "Second, The evidence, when considered as a whole, is as consistent with the innocence as with the guilt of the defendant; and, therefore, does not warrant submission of the case to the Jury;
>
> "Third, as to the counts based on the first provision of Sec. 32, Tit. 18, U. S. C., Sec. 76 of the Criminal Code, and which makes it an offense for any person with intent to defraud, falsely to assume or pretend to be an Officer or Employee acting under the authority of the United States or any Department or any officer of the Government thereof and who shall take upon himself as such.
>
> "There is neither allegation in the indictment, nor evidence of any act on the part of the defendant, Pierce, as an Officer, or Employee of the Federal Government, and no evidence that the defendant, Pierce officiated, or attempted to officiate as an officer or employee acting under the authority of the United States, or any Department or any officer of the Government thereof;
>
> "Fourth, as to counts based on the second division of said Section 32 of the Criminal Code (18 U. S. C., Sec. 76) which makes it an offense for any person, with intent to defraud to demand or obtain any money, papers, documents, or other valuable things" while acting in a purported Federal Official character. There

is neither allegation in these counts of the indictment, nor evidence that the defendant, J. E. Pierce, demanded or obtained anything of value by reason of false personation of an employee, or officer of the United States Government, or any department or officer thereof;

"Fifth, The Tennessee Valley Authority, while an instrumentality of the Government, is a corporate entity, separate and distinct from the Government, so that employees thereof are not Officers or employees of the Federal Government or any Department thereof, so as to come within the purview of Section 32 of the Criminal Code; and consequently, any claim that the defendant, Pierce, was connected with the TVA or representing the TVA would not constitute a false personation under Section 32 of the Criminal Code;

"Sixth, The undisputed evidence shows that in each and every transaction complained of in any count of the indictment the person from whom funds were obtained was given a receipt therefor, this showing that the money was received, not in a Federal Official character, but as Publisher of a newspaper, and even though the evidence should be susceptible of the interpretation that the defendant claimed to be selling TVA Units, such a representation, in the face of the fact that each person named in any count of the indictment had at hand the means of detecting the falsity, would not constitute a false pretense within, the meaning of the Federal Statute;

"Seventh, There is no evidence of any overt act which is an essential element of both of the offenses denounced by Section 32 of the Criminal Code, and the mere representation, or claiming to be an Official, a Federal Official, would not constitute a violation of that Statute."

2. The Circuit Court of Appeals erred in overruling petitioner's fourth assignment of error in that Court (R. 334), complaining of the action of the trial court in refusing to grant petitioner's special request, incorporated

in that assignment, in which the court was asked to instruct the jury that the Tennessee Valley Authority, commonly designated as the TVA, was a corporate entity, separate and distinct from the Government, so that the employees thereof were not within the purview of Section 32 of the Criminal Code, such request having been duly tendered and exception taken to the refusal of the trial judge to grant the same, all of which appears at page 308 of the record. (Reference is here made to Question 2, *ante*, where the special request herein referred to is set out in full.)

3. The Circuit Court of Appeals erred in failing and refusing to hold that a mere verbal declaration of a connection with, or representation of, the Federal Government, unaccompanied by the display of any badge or insignia of office, or any act in keeping with the pretense, does not constitute a violation of Section 32 of the Criminal Code, and particularly in refusing to sustain the 6th ground of petitioner's motion for a directed verdict, this ground reciting that there was no evidence of an overt act that is an essential element of both offenses denounced by Section 32 of the Criminal Code (R. 333).

4. The Circuit Court of Appeals erred in holding on the first appeal that the several counts of the indictment adequately charged a violation of Section 32 of the Criminal Code and on the second appeal in sustaining the action of the trial court in overruling the 3rd and 4th grounds of petitioner's motion for a directed verdict, these being based in part on the claimed insufficiency of the indictment (R. 332, 333).

(While believing that the indictment does not sufficiently state a violation of Section 32 of the Criminal Code, that question is so interwoven with the sufficiency of the evidence to support a verdict that petitioner, having brought it to the attention of the Court, will not further discuss the validity of the indictment.)

ARGUMENT.

We state and shall argue:

I. Petitioner's Motion for a directed verdict should have been sustained.

II. The refusal of petitioner's special request was a denial of due process of law.

III. A mere verbal declaration of a general or undefined federal agency or employment unaccompanied by any apparent or colorable official act does not constitute the false personation that is an essential element of both offenses denounced by section 32 of the federal criminal code.

I.

THE MOTION FOR A DIRECTED VERDICT SHOULD HAVE BEEN SUSTAINED.

In support of the foregoing contention, we state and argue:

(1) There is no substantial evidence that petitioner claimed to be an officer or employee of the Federal Government, or any department thereof selling "T. V. A. Units."

(2) Such a claim, if made to the indictment witnesses, falls within the operation of the rule that there is no false pretense where the representation is "absurd or irrational or where the party alleged to be defrauded had the means of detection at hand."

(1)

In the opinion, the Court of Appeals states that a "witness who with positiveness could recount all the details surrounding an event that had occurred four years previously would be either a genius or unworthy of belief. 3 Wigmore on Evidence (3rd Ed., 1940), Sec. 726" (pp. 2-3).

An application of the sound principle thus stated, together with another principle, recognized by the same distinguished author, would seem to preclude any holding that there was substantial evidence to support the conviction under any count. We refer to the principle of "*completeness*" (Wigmore, 3rd Ed., Secs. 729, 2099), that should be applied both to "recollection" and "observation" of a transaction involving both words and acts.

In attempting to narrate the words and acts of petitioner no witness other than Utley, who had obviously memorized his testimony at the former trial (R. 59, 62), claimed to be able to state the substance of the things said and done by petitioner, considered as a whole, in presenting his plan. Utley's testimony does not establish any violation of the statute.

The impression which petitioner intended to convey to any witness should be determined "not by individual words or phrases alone, but by the whole impression or effect of what has been said or done" (Wigmore, 3rd Ed., Sec. 1040).

" 'Substance' though not reproducing the precise words, should at least represent the tenor of the utterance as a whole, and not mere fragments of it" (Wigmore, Sec. 2099).

If tested by the foregoing principles, which we regard as sound and fair, the testimony of the government does not present a substantial conflict with the positive testimony of petitioner and his witnesses. The case should

therefore be controlled by the rule pronounced by the Supreme Court in *Gunning* v. *Cooley*, 281 U. S. 90, which rejects the scintilla rule and holds that where the evidence on one side is so overwhelming as to leave no room to doubt what the fact is, the case should not be submitted to the jury.

Bearing in mind that an understanding of the plan presented by petitioner required the prospect to exercise both his faculties of *hearing* and *observation*, that almost without exception government witnesses, testifying to transactions involved in the indictment, testified that they paid little or no attention to the newspaper demonstration, made by appellant to every prospect as a part of the presentation of the plan, or to the exhibition or reading of letters to them (R. 40, 47, 57, 78, 105, 110, 111, 112, 126, 128), it seems quite clear that such testimony does not meet the test of "completeness" that should be applied in determining its probative force.

Further discussing the evidence, we state certain propositions, supported by the record, which we think conclusively show that peremptory instructions to return a verdict of not guilty should have been given to the jury.

(a)

The General Features of the Sales Talks Made by Petitioner in the Solicitation of Funds Were Practically the Same. This Uniformity Being Established by the Testimony of Both Witnesses for the Government and the Defendant.

The testimony is in substantial accord as to the things done. These include:

(1) The reading in whole or in part of a letter, identifying Pierce as the representative of a newspaper, carrying out a program of advertising; (2) the exhibition of a post card folder, showing among other things buildings in which he was interested, this further identifying him with private enterprise; (3) the demonstration of

the plan with copies of the Huntsville Daily Register, showing the character of advertisements given counties previously canvassed; (4) the taking of checks payable to this newspaper or bearer; (5) and the issuance of a receipt *written in the presence of the contributor, on the printed bill head of the Huntsville Daily Register*, this receipt showing the purpose for which the money was paid (R. 25, 34, 40, 49, 53, 54, 63, 67, 69, 70, 75, 77, 85, 87, 88, 98, 100, 110, 105, 106, 163, 206, 215, 217, 223, 227, 228, 236, 250, 260, 261).

In some instances, Goverrment witnesses, testifying to transactions involved in the indictment, do not admit the reading of the letter of identification (Ex. 2, R. 35) to them but state that they could not recall whether or not petitioner read this letter to them (R. 58, 78, 87, 101). One of these indictment witnesses, who could not recall whether or not this letter was read to him, testified that petitioner's representations were "something like statements in that letter" (R. 78).

All of the indictment witnesses, however, admitted that copies of the Huntsville Daily Register were exhibited to them in the demonstration of the plan, that petitioner discussed advertising with them, and most of them also admitted that they understood the paper was to be sent to them for a stated period of time (R. 54, 58, 67, 71, 75, 76, 85, 87, 93, 101, 111, 125, 130, 131).

In but one instance was there any misunderstanding as to the character of the newspaper exhibited by petitioner. The government witness Conyers, the transaction with that witness being involved in Counts 16 and 17, testified that he consented for petitioner to advertise his land (R. 131) but that he thought the Huntsville Daily Register, copies of which were exhibited to him, was a TVA publication and not a personally owned paper, stating, however, that he reached this conclusion without making any inquiry of petitioner about the own-

ership or publication of the paper used in the demonstration (R. 126). Conyers seems to have been the only person among the hundreds to whom the demonstration was made who drew the conclusion that the Huntsville Daily Register was a TVA publication.

A comparison of the testimony of the Government witness Witt, testifying to the transaction involved in Count 2, and that of State Senator C. E. Garner, a banker and farmer of Gibson County, who testified in behalf of petitioner, establishes that the sales talk, so uniform that some of the witnesses referred to it as a "canned sales talk" (R. 259, 260), to these two witnesses was substantially the same, though they drew different conclusions therefrom.

Witt testified that petitioner stressed the importance of cheaper power, better roads and lower taxes to rural communities, and claimed that he was "trying to promote community organization and advertising along that line" (R. 57).

Garner, who contributed $50, testified that he thought his "contribution might help to promote and bring about quicker the rural development of TVA" (R. 245), but that petitioner did not claim to be "acting for the Government or any of its agencies," and that he, the witness, understood that he "was contributing to an advertisement in the Huntsville Daily Register," so doing because he was "interested in hastening the extension of cheaper power to Gibson County" (R. 249).

Both Witt and Garner contributed with the same object in view—hastening the extension of cheaper power into their respective communities. Each acted on substantially the same representations. One confused a publicity advertising campaign by a newspaper promoting the objectives stated with an officially sponsored program of the Government or the TVA with respect to one of these objectives, the extension of cheaper power. The

other did not. *The difference was not in the representations that were made but in the understanding of the witnesses.*

But Witt's misunderstanding of the plan was not disclosed to petitioner. Neither he nor any other indictment witness asked petitioner if he was connected with the Government and only one of them made specific inquiry as to the purpose for which his contribution would be used, and he was told that it was for "advertising" (R. 88).

(b)

It Is Indisputably Established by the Record That Pierce in the General Course of the Extensive Campaign Conducted by Him Was Able to Sell and Did Sell His Plan to an Overwhelming Majority of the Several Thousand Persons from Whom He Solicited Subscriptions Without the Slightest Pretense of Federal Authority and That Any Confusion of His Publicity Advertising with an Officially Sponsored T. V. A. or Government Program Only Occurred in Exceptional Cases and Then Without the Knowledge or Design of Pierce.

The testimony of various persons who accompanied petitioner and Roach in the campaign for the solicitation of funds, and who stand unimpeached in the record, clearly sustain the above proposition. These witnesses are: Walter Brock (R. 206) and Dewey Claunch (R. 257), who accompanied defendant in the canvass of Mississippi counties immediately preceding the campaign in West Tennessee; R. E. Ross (R. 215), Ernest N. Drake (R. 217), Artie B. Dancer (R. 222), W. A. Penner (R. 226), J. H. Caughlin (R. 235), Ernest Caldwell (R. 235), J. H. Caughlin (R. 235), and E. C. Harrell (R. 250), who accompanied petitioner and Roach in the canvass of West Tennessee counties.

These ten witnesses accompanied petitioner for various intervals of time, ranging from three days to three months, and in the aggregate heard not less than a thousand (probably more) of the sales talks as made to all classes of persons and under conditions identical with

those existing in Gibson and Crockett Counties, but not one of them ever heard the expression "TVA units" until the arrest of defendant in the present case; and each testified that petitioner was engaged in a campaign in which funds were solicited for newspaper advertising and that the plan was presented without any claim or pretense of Federal authority or official connection with the Tennessee Valley Authority.

There are two uncontroverted facts in connection with the general course of the business as conducted by Pierce which are destructive of the Government's theory of a general scheme to defraud the public through a false pretense of Federal authority. One of these is equally destructive of any theory that such was done in exceptional cases.

First: Petitioner as a rule was accompanied in his canvass of a county by some local resident of good character and standing, who was familiar with the roads of the county, and usually selected on recommendation of the Sheriff, or the Chamber of Commerce if such existed in the county. This party did not participate in the campaign further than to show the roads of the county and aid in locating the residences of persons on whom Pierce planned to call. But he either heard or had the opportunity to hear what was said in presenting the plan, and too often to be mistaken as to the nature of the plan. If Pierce was engaged in the execution of a plan to swindle the public it is inherently improbable that he would have followed the course pursued with respect to the employment of residents of the counties canvassed who would be available as witnesses to prove the representations that were made.

Second: Pierce, in every instance where money was received by him, gave the contributor a receipt written in his presence, showing the exact purpose for which the

money was paid. If petitioner had obtained funds as a Federal Officer, a reading of the receipt meant immediate discovery and probably exposure of the fraud, and while Pierce was still engaged in a canvass of the county. Is this the course of a clever swindler, executing a scheme to defraud? Would any man with intelligence above that of a plain idiot perpetrate a dangerous fraud and as a part of the fraudulent transaction serve a written notice thereof on the victim of the fraud?

But that is what Pierce did if he obtained money in the pretended character of a Federal official for a T. V. A. program and at the same time executed a receipt showing that the money was paid to a newspaper for subscription and advertising. It is said, however, that the receipts were folded. What of it? Did that afford any substantial protection? How long did it take to unfold one of these receipts?

The answers to these questions may be found in the testimony of the Government witness, M. R. Lewis, speaking with reference to the receipt given him by the defendant this witness testified:

"Q. And you had no difficulty in understanding it was for a newspaper?

A. No, sir; not after I read the receipt, I didn't.

Q. And that receipt was given you at the time you gave him the check?

A. Yes, sir.

Q. All there as a part of the same transaction?

A. That is right.

Q. And even though it was folded, unfolding it just took an instant of time, didn't it?

A. That is right, yes, sir" (R. 104).

At this point we emphasize the previously stated fact that when any person asked petitioner if he represented the Government, this being done occasionally, or indicated any confusion as to the character of the work

in which he was engaged, petitioner promptly and positively stated that he was not connected with the Government in any capacity but was soliciting funds for "advertising" (R. 167, 210, 230, 242, 257).

(c)

The Testimony of the Government Consists of Hasty Impressions and Unwarranted Conclusions That Bear No Reasonable Relation to the Things Said and Done by Defendant in Presenting His Plan and Therefore Do Not Present a Substantial Conflict with the Direct and Positive Evidence That Supports the Theory of the Defendant.

The proposition stated is clearly shown by an examination of the testimony of the Government witness, Anderson, first witness for the Government. Anderson did not testify to any transaction involved in the indictment, but to a similar transaction. He testified that he understood that petitioner was a representative of the Government although he could not state the exact language used to convey that impression (R. 30, 32, 33).

On the first trial, this witness had testified with emphasis that he did not see nor sign the check for $100 given to petitioner at the conclusion of his sales talk to Anderson, but that this check was written and signed by the bookkeeper in the store of the witness. It developed, however, that Anderson personally signed the check, and he acknowledged his signature when it was produced (R._____), but that is not the point here stressed.

On direct examination, Anderson testified that petitioner "represented himself * * * as a Government man," stated he had to "report to Washington every day or night" (R. 25), and further that the Government would make a contribution to supplement the funds contributed by the County (R. 27). No other witness testified to as many apparently incriminating declarations on the part of petitioner.

On cross-examination when pressed to particularize the things said and done by Pierce that caused the witness to conclude that he was an officer or representative of the Government, Anderson thus testified:

> "Q. Did he (Pierce) tell you he was an officer of the Federal Government?
>
> A. He was representing the Government to me.
>
> Q. Did he say he was an officer?
>
> A. *I wouldn't say he said he was an officer.*
>
> Q. Did you say he said he was representing the Government?
>
> A. I was being advertised in that paper—
>
> Q. I didn't ask you that. Did he say he was representing the Federal Government?
>
> A. He said enough to me to make me believe that he was there for the Federal Government.
>
> * * * * * * *
>
> Q. As a matter of fact, this thing was much fresher in your testimony in the first trial—in your testimony in the first trial, and you couldn't say and wouldn't say that he said he represented the Government: That was your testimony in the first trial?
>
> A. I am saying now that I wouldn't say how he brought that up" (R. 32-33)

Upon a fragmentary view of the testimony of Anderson, his conclusions and the statements attributed by him to petitioner, tend to support the theory of the Government that the latter was acting in the pretended capacity of a federal official. But when considered as a whole, and in connection with undisputed documentary evidence, the testimony of Anderson not only fails to support the theory of the Government but strongly corroborates the contention of petitioner that he was soliciting funds for community advertising and that the things said and done by him in the presentation of his plan left no room for any other conclusion.

Indisputable facts, shown by Anderson's testimony, considered as a whole, establishing to a mathematical certainty the proposition that his conclusion that petitioner represented the Government (R. 32-33) was solely the fault of the witness and not designed by nor disclosed to, petitioner, include the following:

(1) Petitioner identified himself as editor and publisher of the Huntsville Daily Register, discussed the work of that paper, requested the witness to furnish him pictures for publication therein, and exhibited copies thereof in a demonstration of the plan (R. 25, 27, 35).

(2) Petitioner read to the witness in part the letter of identification, Government Exhibit 2, and particularly the portions thereof which said "this will introduce J. E. Pierce, *editor and Vice-President of the Huntsville Daily Register*" and "we have assigned Mr. Pierce to the task of completing the Muscle Shoals series of *page newspaper advertisement*" (R. 35).

(3) Petitioner exhibited to Anderson several checks from contributors with whom the witness was acquainted, (all checks showed they were for advertising), and the witness testified that he could have seen what was written on these checks but only read the signatures (R. 34).

(4) Anderson's contribution for $100, the largest amount involved in any transaction with a Government witness, was paid by check. This check was not written by petitioner but by Anderson's bookkeeper. It showed on its face that it was given for advertising, and the check, including the words "for advertising" written plainly and in "bold, large letters," "very easy to see," was signed personally by Anderson (R. 28, 29).

(5) The receipt given by petitioner to Anderson's bookkeeper, in his presence, was not folded but open (R. 37).

Petitioner's then plainly stated purpose, a statement made in the presence and hearing of Anderson, for which the check was received appears from the testimony of Anderson's bookkeeper, J. A. Hill, who testified in behalf of the Government, and we quote therefrom as follows:

> "Mr. Pierce was seated at Mr. Anderson's desk when he instructed me to write the check, and so was Roach. I asked Mr. Pierce who to make the check to and he told me, in the presence of Mr. Anderson, to make it payable to the Huntsville Daily Register or bearer. And I asked him what it was for in the presence of Mr. Anderson and he told me it was for 'advertising,' and I wrote that on the check myself. There was no concealment from Mr. Anderson. Mr. Pierce did not whisper his instructions. He was four, five or six feet behind me, and there was nothing to keep Mr. Anderson from hearing him. After I had given him the check, Mr. Pierce gave me a receipt, handing it to me there in the office."

In determining petitioner's freedom from responsibility for Anderson's misunderstanding, it is immaterial whether Anderson heard the instructions or read the check or the receipt. Petitioner had no reason to believe Anderson would not read the check nor hear instructions given in his presence in a small private office to his bookkeeper who was instructed to write the check.

In the belief that Anderson's testimony more strongly supports the theory of the Government than that of any other witness, we selected it for special discussion. Of course, it would be impractical to make a detailed analysis of the testimony of each witness but the testimony of no Government witness presents a stronger case than that of Anderson. His testimony, when considered as a whole or in the light of indisputable documentary evidence, is destitute of any factual basis to support his conclusion that petitioner impersonated an officer or employee of the Federal Government.

The testimony of petitioner's witness Bringle is illuminating as to this confusion of concepts or identification of the means with the end and its probable consequence as reflected in the evidence. We quote therefrom as follows:

> "Mr. Pierce asked me then if I wasn't an advocate of cheaper power, good roads and TVA or something to that effect, and I told him I was.
>
> Q. In that connection did you make any inquiry as to what capacity he was there in?
>
> A. Him and myself discussed different things as to him, and sometime in this conversation I asked him if he was connected with the Government, and he turned and told me: 'Don't get me wrong, Judge, I don't represent the Government in any capacity.'
>
> * * * * * * *
>
> Q. You say something was said about cheaper power or TVA. Do you remember the exact language on that point?
>
> A. No, sir, I do not, Mr. Gwinn, because if he said cheaper power, I naturally connected with TVA, and if he had said TVA I would have connected it up with cheaper power" (R. 210).

Further illustrating the conclusions, sometimes absurd, to which a prior concept, a faulty recollection, or careless listening may lead, reference is made to the testimony of the Government witness Luckey that petitioner claimed to have been acquainted with Andrew Johnson (R. 112), the basis thereof being petitioner's statement that Oscar Johnson, one of the nation's leading agriculturists, had subscribed to his program of community advertising (R. 135).

Petitioner became acquainted with President Roosevelt when the latter was Assistant Secretary of the Navy (R. 135, 139). In praising the power objectives of the Roosevelt Administration, petitioner sometimes referred to this acquaintance (R. 240). Petitioner's letter of identification was signed by his son as president of the cor-

poration that published the Huntsville Daily Register (R. 36). Two of the Government witnesses (Anderson and Shoaf) neither, however, testifying to a transaction involved in the indictment, to whom this letter was read, stated that they thought it was signed by the President of the United States (R. 35, 131). The parts of the letter which these witnesses identified as having been read to them clearly show that there was no ground for such a conclusion (R. 35, 139).

According to one of the Government witnesses, when demand was made that petitioner refund the money paid him by another Government witness, he refused on the ground that he had sent the money to "Washington" (R. 61). But the witness making the demand testified that petitioner refused on the ground that he had sent the money to "Alabama" (R. 65).

These two government witnesses were testifying about the same conversation.

There were frequent references to the "TVA" in copies of the Huntsville Daily Register, containing page advertisements of counties previously canvassed, which were exhibited to the prospect in demonstrating the plan. In one of these papers the banner headline related to the "TVA" and from seeing this, which he referred to as the "big printed top" one of the indictment witnesses, Frank Blackman, formed the conclusion that petitioner was engaged in a Government enterprise (R. 71).

A conclusion formed upon such a flimsy basis is not substantial evidence that petitioner claimed official connection with either the Government or the Tennessee Valley Authority.

At pages 317-327 of the record there is set out extracts from the testimony of the indictment witnesses as given on the former trial. An examination of that testimony, in the light of the testimony of these witnesses at the present trial, illustrates to a pronounced

degree the principle that testimony regarding oral statements, and especially where the exact language of the declarant is a material consideration, is inherently weak and dangerous (*Throckmorton* v. *Holt*, 180 U. S. 551; *American Bell Telephone et al.* v. *People's Telephone Co. et al.*, 22 Fed. 309).

The question presented by the material difference in the testimony at the present and the former trial, concerning oral statements made by petitioner, is not a mere matter of impeachment but goes to the probative value of this testimony. An analysis and comparison of present and former testimony of Government witnesses shows clearly that they were stating conclusions and impressions which, under the facts and circumstances of this case, do not reach the level of substantial evidence of a violation of Section 32 of the Criminal Code and particularly if officers and agents of the TVA are excluded from the scope of that statute.

No Government witness, testifying to a transaction involved in the indictment, whose testimony even by a strained construction thereof could be interpreted as evidence that petitioner represented himself to be an officer or agent of the federal government, claimed to be able to state the exact language used by petitioner or to have observed with care the things done by petitioner in presenting his plan. In holding that such testimony, which did not represent the tenor of petitioner's utterance as a whole but mere fragments of it, was sufficient to overcome positive opposing testimony and otherwise unimpeached documentary evidence, the Court of Appeals disregarded the federal rule with respect to the quantum of evidence necessary to support a verdict as pronounced by this Court in *Gunning* v. *Cooley*, 281 U. S. 90, 50 S. Ct. 231, 74 L. Ed. 720.

The Government testimony, relating to transactions in the indictment, consists largely of impressions and con-

clusions, which, when considered in connection with all the facts and circumstances, are as consistent with a misunderstanding on the part of the witnesses as with a misrepresentation by petitioner, and therefore the Court of Appeals in affirming the conviction disregarded the settled federal rule that peremptory instructions should be given where the evidence, viewed as a whole, is as consistent with innocence as with guilt. *Union Pacific Coal Co.* v. *U. S.*, 173 Fed. 737 (8 C. C. A.); *Nicola* v. *U. S.*, 72 F. 2d 780 (3 C. C. A.).

(2)

To divide the cost of a series of page advertisements into units, and to solicit funds for the payment therefor on the basis of such units, is a plan that could be submitted to a person of ordinary experience without insulting his intelligence. But to pretend to be selling "TVA units," as charged in the indictment, such units having neither actual nor potential existence, and to make that claim to substantial farmers, merchants and physicians, would be a procedure that is difficult to explain on any theory consistent with common sense on the part of the claimant or ordinary intelligence on the part of the person to whom it was made. Consequently, if such a claim was made to persons of the classes mentioned, we think it would fall within the operation of the rule that there is no false pretense where the representation if "absurd or irrational or where the party alleged to be defrauded had the means of detection at hand." Wharton on Criminal Law, 12th Edition, Section 1456, pages 1742, 1743.

Here the persons alleged to have been defrauded not only had the "means of detection at hand" but actually had such means in hand, this being a plain and unambiguous receipt given each subscriber by petitioner, and every person thus furnished a receipt which he could then and there read was fully capable of understanding its meaning.

II.

THE REFUSAL OF PETITIONER'S SPECIAL REQUEST, A CORRECT STATEMENT OF THE LAW, STRICTLY APPLICABLE TO MATERIAL FACTS, AND NOT INCLUDED IN THE COURT'S GENERAL CHARGE, WAS A DENIAL OF DUE PROCESS OF LAW.

The refused special request is as follows:

"At the request of the defendant, the Court further instructs the Jury that the Tennessee Valley Authority, commonly designated as T. V. A., although an instrumentality of the Federal Government, is a corporate entity, separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the T. V. A., or was connected with the T. V. A. as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment" (R. 308).

Under the heading "Government Testimony" (*ante*, p. 10), we have stated the substance thereof as it related to each count on which a conviction was had.

An examination of that testimony as it relates to the point presented in the special request shows that the conviction under nine counts is not supported by a scintilla of evidence unless a claim of connection with, or representation of, the TVA constitutes the offense denounced by Section 32 of the Criminal Code (U. S. C., Tit. 18, Sec. 76).

Such an examination also shows that the three government witnesses, testifying to transactions involved in the other six counts on which petitioner was convicted,

so identified the TVA with the Government as to make the special request equally applicable to these counts.

It was the theory of the prosecution during the three trials of the case that the Tennessee Valley Authority or the TVA was an arm of the Government and that any claim or pretense of being an officer or employee of the TVA was a violation of Section 32 of the Criminal Code which prohibits the false impersonation of officers or employees of the Government or any of its departments (R. 316).

It was the theory of the petitioner that the Tennessee Valley Authority Act of 1933 (U. S. C., Tit. 16, Ch. 12 a, Sec. 831) created a corporate entity separate and distinct from the Government and that officers and employees of that corporation did not come within the purview of Section 32 of the Criminal Code.

Prior to and at the first trial of the case, this contention was presented in a motion to quash the indictment, in demurrer thereto, and also in the motion for a directed verdict. With respect to that contention, the Circuit Court of Appeals, which reversed the conviction on other grounds, said:

> "Another contention is that the Tennessee Valley Authority Act of 1933 creates a corporation that is an entity, separate and distinct from the Federal Government, and that its employees are not officers or agents of the United States within the purview of Section 32. *United States* v. *Strang*, 254 U. S. 29, and *United States* v. *McCarl*, 275 U. S. 1. The holding in the above cases is that the Emergency Fleet Corporation was not a department of the Government. The authorities are, however, inapplicable. The allegations of the indictment are broader than the contention implies, and to the allegations the proofs respond. The defendants were not charged with representing themselves as agents or employees of the Tennessee Valley Authority. They are charged with

having assumed or pretended to be representatives of the Government" (86 F. 2d, p. 951).

At the trial here under review, all the incriminating evidence, if it may properly be so designated, under nine counts was restricted to petitioner's purported claims of a connection with, or representation of, the TVA and a material portion of the government testimony under the other six counts related to such claimed representation of the TVA. But the charge nowhere drew any line or stated any distinction between an impersonation of officers or employees of the Federal Government or those of the TVA (R. 294-308).

In the situation thus stated, the refusal of the special request licensed the jury as to all counts to convict petitioner for a false impersonation of officers or employees of the TVA—an offense not charged in the indictment and this was a sheer denial of due process of law. *Thornhill* v. *Alabama*, 310 U. S. 88.

But that is not all.

Section 32 of the Criminal Code (U. S. C., Tit. 18, Sec. 76) at the time of the commission of the offenses herein alleged did not prohibit the impersonation of officers or employees of the Tennessee Valley Authority. This, in substance, was held by the court on the first appeal in this case, and on the second appeal, in the opinion affirming the judgment, the court stated that a claim to be "acting under the authority of the United States Government" was "*quite a different thing*" from claiming to be an "officer or employee of the Tennessee Valley Authority" (115 F. 2d, p. 401).

As we view it, the construction of Section 32 of the Criminal Code (U. S. C., Tit. 18, Sec. 76) by the Circuit Court of Appeals, excluding officers and employees of the TVA from the scope of that statute, is not an open question on this review. If so, a consideration of its plain

terms and of the report (No. 1763) of the Judiciary Committee of the House of Representatives with respect to the 1938 amendment to that statute compels the conclusion that prior to such amendment the statute did not extend to officers and agents of Government-owned or Government-controlled corporations.

The letter of the Attorney General, incorporated in the report of the Judiciary Committee, is as follows:

"Office of the Attorney General
Washington, D. C., May 7, 1937.

Hon. William B. Bankhead,
The Speaker, House of Representatives,
Washington, D. C.

My Dear Mr. Speaker: The existing law makes it a crime to impersonate any officer or employee of the United States with intent to defraud (Criminal Code, Sec. 32, U. S. Code, Title 18, Sec. 76). It seems desirable to extend the scope of the act so as to penalize impersonation of officers and employees of Government-owned and Government-controlled corporations.

The maximum penalty that may now be imposed for the offense of impersonation is imprisonment for a term of 3 years and a fine of $1,000. In aggravated cases a greater punishment may prove suitable, and I suggest increasing the maximum penalty to imprisonment for 5 years and a fine of $5,000.

A bill to effectuate this purpose is submitted herewith.

Sincerely yours,
Joseph B. Keenan,
Acting Attorney General."

The bill (Sec. 2381) as it passed the Senate contained both proposals of the Attorney General, but upon recommendation of the House Judiciary Committee the penalties of existing law were restored. This recommendation was as follows:

"Your committee concurs in the recommendation of the Attorney General with regard to extension of the statute, but is of the opinion that the existing penalties are sufficient. The committee amendment, therefore, restores the penalties in the bill to those of present law."

The Tennessee Valley Authority Act of 1933 created a *corporation* owned and controlled by the Government (U. S. C., Tit. 16, Ch. 12a, Sec 831) and since the amendment thereof by the Act of February 28, 1939, Section 32 of the Criminal Code extends to the impersonation of officers and employees of a Government-owned or Government-controlled corporation.

But the transactions involved in this case were charged to have been committed in 1935, and *ex post facto* legislation concerning such transactions should not be given a retroactive effect by *de facto* judicial evasion of the then existing law.

The refusal of the special request here under consideration is such an evasion with such a result.

In so insisting we state, first, that the general charge nowhere drew any line nor stated any distinction between an impersonation of officers and employees of the Government and those of the Tennessee Valley Authority; second, that in view of the mass of evidence relating to the Tennessee Valley Authority, such an instruction was imperative, and, third, the refused special request was a correct statement of the applicable law.

SPECIAL REQUEST NOT INCLUDED IN GENERAL CHARGE.

(1)

A Comparison of the Special Request (R. 308) with the General Charge (R. 294-307) Shows That the Points Presented in the Special Request Are Not Included in the General Charge.

As we construe the opinion of the Circuit Court of Appeals, it does not disagree with petitioner's contention,

made in that Court, that the general charge will be "examined in vain for the semblance of a suggestion that officers or employees of the Tennessee Valley Authority were *not* within the purview of the statute" (115 F. 2d 400), but the basis of its refusal to reverse the case for failure to give the special request was the conclusion of that court that such refusal did not mislead the jury or influence the outcome of the trial (115 F. 2d 401).

Regardless, however, of the accuracy of our interpretation of the opinion of the Circuit Court of Appeals, it is clear of doubt that the trial judge at no time during the trial stated or suggested any difference between the TVA and a department of the Government, and the charge neither expressly nor by implication told the jury that officers and employees of the Tennessee Valley Authority *were not* officers or employees of the Federal Government or any department thereof.

True it is that the jury was instructed that the false impersonation of officers or employees, acting under the authority of the Federal Government, or some department thereof, was the gist of the offenses for which defendant was being tried. But was the Tennessee Valley Authority a Department of the Government? The charge does not answer that question.

At the time of the commission of the alleged offenses for which defendant was tried were officers and employees of the Tennessee Valley Authority within the purview of Section 32 of the Criminal Code? The charge made no reference to that question.

At pages 13 and 14 of the Government brief, opposing the petition for certiorari, it was insisted that the instruction at page 306 of the record that a "reference to the TVA in copies of the Huntsville Daily Register" or in the sales talks made by petitioner should not be considered (by the jury) as evidence of a false claim or pretense of federal authority unless made with the "in-

tent of producing a belief on the part of the persons from whom funds were solicited that he, the defendant, Pierce, was acting as an officer or employee of the federal government," was the equivalent of the refused special request. Such a position is wholly untenable.

Anticipating a repetition of this contention, we here set out that portion of the charge that was the basis of the Government's contention:

> "At the request of the defendant, the Court charges you that the claim, if such was made, by the defendant Pierce, that the work in which he was engaged, or the program he was conducting, would hasten the development, or extension, of Cheaper Power in the counties canvassed by him; or, that the funds obtained by him would be used to aid the counties, or par[illegible] obtaining cheaper power, would not, of itself, constitute a false claim of Federal Authority under the statute for the violation of which the defendant is being tried, even though you should find that such claim may not have been well founded. Nor, would a statement, by the defendant Pierce, if such was made by him, that he was working in the interest of the Government, or the TVA, of itself constitute a false pretence of being an officer or employee of the Federal Government, or some department thereof, as the statute does not preclude a citizen's aiding in the furtherance of a Government program.
>
> "At the further request of the defendant the court charges the jury that the claim or assertion of the person that he is working in the interest of the Government, or in furtherance of a Government program, is not, of itself, a false claim or assumption of Federal Authority.
>
> "In this connection the Court further instructs the jury that reference to the TVA in copies of the Huntsville Daily Register, exhibited by the defendant to any person, from whom funds were solicited, and in the sales talks made by him, to such person, should not be considered by you as evidence of a

false claim or pretense of Federal Authority on the part of the defendant Pierce unless you further find and are satisfied from the proof, beyond a reasonable doubt, that such reference to TVA, in either the newspapers or sales talks, were made by the defendant with the intent of producing a belief on the part of the person from whom funds were solicited that he, the defendant Pierce, was acting as an officer or employee of the Federal Government" (R. 305, 306).

The special request dealt with a question of substantive law. The instruction above set out dealt exclusively with a question of "evidence," to-wit, the effect of certain references to the "Government, or the TVA," and it stated no distinction whatever between references to the Government and the TVA. Standing alone, the reference to the "Government, or the TVA," these being referred to in the alternative, might be construed as putting them on the same basis with respect to the operation of Section 32 of the Criminal Code, but when the instruction is considered as a whole it is obvious that it was not intended to instruct the jury as to the status of the Tennessee Valley Authority, that is, whether it was a department of the Government or a separate corporate entity.

Regardless of the status of the Tennessee Valley Authority, if petitioner, by references to the TVA, intended to produce a belief on the part of the persons from whom funds were solicited that he was acting in a federal official capacity, then such references were proper to be considered in determining his guilt or innocence, but unless intended to produce such a belief neither a reference to the Government nor to the TVA should be considered as a circumstance of guilt. Clearly this is the meaning of that part of the charge above set forth.

But that is something materially different from the point presented by the special request.

If, however, the language of the general charge may by a technical interpretation be read so as to cover and include the proposition contained in the special request, it cannot fairly and reasonably be held to present "distinctly and sharply to the jury" the ground of defense set forth in that request. Therefore, the refusal of the special request constitutes reversible error. *McDonald* v. *U. S.*, 241 Fed. 793, 799.

The reason why an obscure meaning in a general charge, or one that may be deduced from a careful examination of the printed page, does not excuse the refusal of a special request which clearly and sharply brings a material point to the attention of the jury, is well stated by the Circuit Court of Appeals for the 8th Circuit in *Western Union Tel. Co.* v. *Morris*, 105 Fed. 49, 53 (C. C. A. 8), as follows:

> "In support of the rulings of the court counsel for the defendant in error invoke the rule that it is not erroneous for the trial court to refuse to give instructions to the jury in the language of the attorneys when the substance of the instructions is embodied in the general charge of the court. The soundness of this rule is conceded, but its applicability to this case is not admitted. It may be that the substance of some of the requests can be deducted from the general charge of the court by a careful and painstaking process of reasoning * * * But this conclusion is a deduction from a careful study of the written charge and an extended process of reasoning. The jury had no opportunity to study this charge in this way. They did not read it at all, and heard it but once. It is plain that it did not as clearly present to those who heard it the real issues as did the requests for instructions which formulated them. A single delivery or reading of this general charge probably would not at once present to the minds of all who heard it the crucial questions in this case, which the submission of the instructions requested which clearly stated those issues and applied the law to them would have been sure to do so * * *."

REQUESTED INSTRUCTION APPLICABLE TO EVIDENCE.

(2)

In View of the Mass of Evidence Relating to the Tennessee Valley Authority, So Vital a Point As the Distinction Between That Corporation and a Department of the Government Should Have Been Covered by a Clear and Explicit Instruction.

Bird v. *United States*, 180 U. S. 356, 45 L. Ed. 570.
Little v. *U. S.*, 73 F. 2d 861 (C. C. A. 10).
U. S. v. *Messinger*, 68 F. 2d 234 (C. C. A. 4).
Bates County v. *Wills*, 239 Fed. 785 (C. C. A. 8).
Northern Central Coal Co. v. *Hughes*, 224 Fed. 57 (C. C. A. 8).

No line being drawn by the general charge between the impersonation of officers of the Government and those of the T. V. A., the jurors, if they believed that petitioner claimed to represent the T. V. A., would have returned a verdict of guilty under any count where such a representation was made although there was no evidence that petitioner also claimed to represent the Government. This is not a matter of speculation, as that is precisely what was done by the jury, which returned a verdict of guilty under all counts of the indictment, including those where the government witness did not claim that defendant made any reference whatever to the Federal Government.

The Court of Appeals did not hold that the general charge drew any line between impersonation of officers or employees of the Government and those of the Tennessee Valley Authority, nor hold that the special request did not correctly state the law on the point therein stat but held in effect that its refusal was harmless error (11[illegible] F. 2d 401).

Such a conclusion was a jury-invading speculation. How could that court determine what verdict would have been rendered under proper instructions without in-

vading the province of the jury which is the "fact finding body in criminal cases"? (*Patton* v. *U. S.*, 281 U. S. 276.)

Upon what theory consistent with the principle stated could the Court of Appeals hold that the verdict would not have been affected by an explicit instruction as to the effect and the limitations of the evidence relating to statements claimed to have been made by petitioner that he represented or was connected with the T. V. A.?

And upon what theory other than the failure of the jury to make any distinction between an impersonation of officers or employees of the Tennessee Valley Authority and those of the Government can the verdict on the transaction with Conyers (Counts XVI and XVII) be explained when there is not a whisper of evidence that petitioner in such transaction claimed any representation of or connection with any official agency except the T. V. A.? (R. 120).

Here is what Conyers testified:

> "He (Pierce) said, I am representing TVA in their project to get to the rural communities in the TVA territory. He said that the TVA has a proposition in which they propose to meet the counties in a subscription of something that he called units. He said each county, according to its area and population is asked to do so much, and the TVA, we are meeting that with TVA funds" (R. 120).

One of the chief objectives of a charge is to "bring into view the relation of the particular evidence adduced to the particular issue involved." *Bird* v. *U. S.*, 180 U. S. 356, 362.

Obviously the general charge did not do this with respect to the testimony of Conyers, and the refusal of the special request was therefore a violation of the principle pronounced by this Court in *Bird* v. *U. S.*, *supra*.

To speculate as to the consequence of that violation is to deny petitioner that fair trial before a properly instructed jury that is contemplated by our statutes and constitutional provisions. *Little* v. *U. S.*, 73 F. 2d 861, 866, 867; *Broadway Mfg Co.* v. *Leavenworth Terminal Ry. Bridge Co.* 81 Kan. 616, 106 Pac. 1034, 28 L. R. A. (N. S.) 156.

What has been said with respect to the application of the principles stated in *Bird* v. *U. S.*, *supra*, and *Little* v. *U. S.*, to the foregoing testimony of Conyers is equally applicable to the testimony of the other indictment witnesses, that is, those testifying directly to transactions involved in the indictment.

Government witnesses, testifying to transactions involved in the indictment, did not claim to be able to repeat the exact language used by petitioner with respect to the Government (R. 51, 69, 70, 77, 78, 86, 97, 110, 112, 123).

The basis of the conclusion of these witnesses that petitioner was representing the Government was their construction of statements relating to the T. V. A. and cheaper power which they regarded as government enterprises, and in their testimony they made no distinction between the Government and the T. V. A.

Instances include:

The testimony of Simpson, relating to counts 11 and 12, that petitioner claimed to be "working in the interest of the Government" (R. 73, 78). This witness testified at a preliminary hearing when the matter was fresh in his recollection that petitioner claimed to be "working in the interest of T. V. A." (R. 78, 79, 288); that of Blackman, testifying to the transaction in Counts 14 and 15, that he reached the conclusion that petitioner represented the Government because the letters "TVA" constituted the

"big printed top" across the page of one of the newspapers exhibited to the witness (R. 71); that of Robinson, testifying in regard to Counts 18 and 19, that he quoted petitioner as saying that he represented the Government because the latter claimed to be "selling T. V. A." which the witness considered a "government project" (R. 316, 317).

To detail further testimony, showing that Government witnesses who reached the conclusion that petitioner represented the Government made no distinction between the T. V. A. and the Government, and held the conception that the T. V. A. and the Government were identical or that the former was a department of the latter, would serve no useful purpose. It is too clear to admit of reasonable controversy that the conclusion of each of the indictment witnesses, not one of whom claimed to be able to state the exact language used by petitioner, rested largely, if not entirely, upon the belief of the witness that a representative of the Tennessee Valley Authority was a representative of the Government (R. 52, 55, 56, 66, 71, 78, 79, 84, 91, 316, 317).

Consequently, the jurors in the absence of an instruction to the contrary could infer, and were likely to infer, that the T. V. A. was a part of the Government and that no distinction need be made between an impersonation of Government officials and the impersonation of T. V. A. employees in determining the guilt or innocence of the defendant. But that distinction was of major importance in nine counts and a material consideration in the others. This being true, the refusal of the special request was error as to all counts. *Lomento* v. *United States*, 4 F. 2d 900 (C. C. A. 8).

REFUSAL OF SPECIAL REQUEST PLAIN ERROR.

(3)

Petitioner's Special Request Was a Correct Statement of the Law. It Related to a Material Matter That Was Not Included in the Court's General Charge. Its Refusal Was Therefore Plain Error.

Thorwegan v. *King*, 111 U. S. 549, 28 L. Ed. 515.

The error in its refusal was not cured by correct instructions on points not covered by the request nor by a clear and explicit instruction that before a conviction could be had the evidence must show beyond a reasonable doubt that petitioner falsely impersonated an officer or employee of the United States Government. Had that instruction related to the matter presented by the special request, petitioner on request would have been entitled to have the converse thereof submitted to the jury. *Bird* v. *U. S.*, *supra*; *Little* v. *U. S.*, 73 F. 2d 861, 867.

But the instruction that the Government was required to prove beyond a reasonable doubt that petitioner falsely claimed or pretended to be an officer or employee of the United States did not reach the defense set out in the special request.

Such an instruction did not suggest nor define the status of the TVA but left the jury free to infer that the Tennessee Valley Authority was a part of the Government and its officers and agents within the purview of Section 32 of the Criminal Code. If there is a hint or an intimation to the contrary in that instruction or the general charge, where is it, and what is it?

At the time of the commission of the offense alleged herein, officers and agents of the TVA were excluded from the operation of Section 32 of the Criminal Code. If that was the law, and it was, why should not the jury have been so told in plain terms?

In the absence of such an instruction, it can not be told whether the verdict was based on evidence of an impersonation of officers or employees of the TVA—not of itself a federal offense—or upon evidence of an impersonation of officers or employees of the United States Government. This being true, the verdict can not be sustained. *Stromberg* v. *California*, 283 U. S. 359, 75 L. Ed. 1117.

It is not necessary that petitioner in order to obtain a reversal for failure to give the special request explore the minds of the jurors and show that they actually entertained the conception that the TVA was a department of the Government. This he could not do, and if "*within the range of a reasonable possibility*" the refusal of petitioner's special request, stating the law that was applicable to a material part of the evidence, may have "affected the verdict" of the jury, the error in its refusal can not be disregarded as harmless without an invasion of the province of the jury by the reviewing Court. *Little* v. *United States*, 73 F. 2d (C. C. A. 10) 861; *Broadway Mfg. Co.* v. *Leavenworth Terminal Ry. & Bridge Co.*, 81 Kan. 616, 106 Pac. 1034, 28 L. R. A. (N. S.) 156.

Anticipating a renewal of the criticism of the special request, made at page 14 of the Government brief, opposing the petition for certiorari, we shall briefly consider that criticism.

It was there insisted that the special request should have included the qualification that any reference by petitioner to the TVA, if intended to convey the impression that he was an officer of the Government, would constitute a violation of the statute. But in the general charge, the Court had so instructed the jury (R. 306), and there was no reason why he should be asked to repeat in the special request an instruction on a point covered by the general charge when the request related to a matter omitted from the charge.

At any rate the special request challenged the attention of the Court to the ground of defense therein set

forth, and petitioner's right to a clear instruction on the matter thus presented was so important that a reviewing court should disregard technical defects, if any, in that request. *McDonald* v. *U. S.*, 241 Fed. 793-799.

It is not believed that there was any material defect in the special request under consideration, but in view of the mass of evidence relating to the TVA and the probability that the jury might conclude that the TVA was a "branch of the United States Government" or an "authority of the United States," the Court in accordance with well established principles, and in the absence of any special request, should have instructed the jury on the effect of such evidence.

Authorities holding that in criminal cases the Court should instruct on all essential questions of law involved whether requested or not, include:

Calton v. *People*, 103 U. S. 83, 32 L. Ed. 870.
Bird v. *U. S.*, 180 U. S. 356, 45 L. Ed. 570.
Kinard v. *U. S.*, (D. C. App.) 96 F. 2d 522.
Meadows v. *U. S.*, 82 F. 2d 88 (D. C. App.).
Kriemer v. *U. S.*, 11 F. 2d 722 (C. C. A. 2).
Strader v. *U. S.*, 72 F. 2d 589 (10 C. C. A.).
Lamento v. *U. S.*, 4 F. 2d 901 (C. C. A. 3).
Pearson v. *State*, 143 Tenn. 385, 397, 226 S. W. 588.
Boyett v. *U. S.*, 47 F. 2d 482 (C. C. A. 5)
Oras v. *U. S.*, 67 F. 2d 463 (C. C. A. 9).
Commonwealth v. *Jordon*, 328 Pa. 439, 196 Atl., p. 10.

The reason for the rule is well stated in *Pearson* v. *State*, *supra*, a Tennessee decision cited with approval in *Kriemer* v. *U. S.*, and *Kinard* v. *U. S.*, *supra*, in which the Court says:

> "The Court's charge is the safeguard of one accused and is his guarantee that his trial will be protected by all the rules of law established in expe-

rienced judicial procedure for securing a fair and impartial trial."

There is no substantial evidence, as petitioner construes the record, that officers or agents of the Tennessee Valley Authority were impersonated by him, but if so, Section 32 of the Criminal Code, as it existed in 1935, could not be extended by judicial construction to include such an impersonation without violating principles that are fundamental in our system of jurisprudence.

There are no common law crimes punishable by the Federal Government, and before punishment can be imposed by Federal Courts, the act charged and proven must be clearly and unmistakably within the provisions of a Federal penal statute. These may not be enlarged by construction to include kindred acts which the courts may consider as reprehensible as those denounced by the statute. *Falulo* v. *United States*, 272 U. S. 620, 71 L. Ed. 443.

Without further discussion of the special request it is respectfully insisted that in view of the extent to which the testimony related to a claimed connection, on the part of petitioner, with the TVA or his discussion of the objectives thereof with the witnesses, the refusal of that request licensed the jury to convict on a charge not contained in the indictment, as construed by the Circuit Court of Appeals, and also to convict for words and acts that were only made offenses by an *ex post facto* statute. To license the jury to do either constitutes a denial of due process of law.

III.

A MERE DECLARATION OF A GENERAL OR UNDEFINED FEDERAL AGENCY OR EMPLOYMENT UNACCOMPANIED BY ANY APPARENT OR COLORABLE OFFICIAL ACT DOES NOT CONSTITUTE THE FALSE PERSONATION THAT IS AN ESSENTIAL ELEMENT OF BOTH OFFENSES DENOUNCED BY SECTION 32 OF THE FEDERAL CRIMINAL CODE.

In making the foregoing contention, we do not insist that the statute restricts either offense to the impersona-

tion of a particular official or the performance of legally authorized acts. The statute may be violated although the assumed office or authority has no legal existence. But the statute requires something more than words to constitute a false impersonation. It does this in express terms:

> "Whoever, with intent to defraud * * *, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States * * *, and shall take upon himself to act as such, or shall in such pretended character demand or obtain any money, etc., * * * shall be fined or imprisoned * * *, and shall take upon himself to act as such, or shall in such pretended character demand or obtain any money, etc., * * * shall be fined or imprisoned" * * *.

False personation is the "gist" of both offenses punishable under this statute. *Little* v. *United States*, (9 C. C. A.) 169 Fed. 620, *Ferguson* v. *United States*, (10 C. C. A.) 293 Fed. 361; *Read* v. *United States*, (2 C. C. A.) 252 Fed. 21. The prohibition of the first clause of the act is carried forward into the second by the use of the words "in such pretended character." *Lamar* v. *United States*, 241 U. S. 103.

In *King* v. *United States*, (5 C. C. A.) 279 Fed. 103, the Court thus construed an indictment which charged that the accused "did then and there in such pretended character place the said (naming the parties) under arrest":

> "The word 'pretend' in the connection in which it is used in the indictment, means the putting forward of a false appearance of being officers * * * the simulating or feigning to be officers."

In *Cronin* v. *People*, 80 Mich. 646, cited with approval by the Supreme Court in *Barnow* v. *U. S.*, 239 U. S. 74, as to the construction of the clause, "And take upon himself to act," etc., the Michigan court, construing a

state statute almost identical with the Federal statute, said:

> "The statute does not attempt to punish any person for falsely assuming to be any of the officers named in the section, but for assuming and taking upon himself to act or officiate in any office or place of authority."

How could any person "take upon himself to act or officiate in any office or place of authority," unless he exhibited some badge or insignia of office or performed a colorable official act? This need not be a legally authorized act, but it must be an act done in the "falsely assumed character" (*Lamar* v. *United States, supra*) and an act in "keeping with the pretense." *United States* v. *Barnow, supra.*

In the instant case, petitioner exhibited no badges, executed no purported official receipts, did not have in his possession any "T. V. A. Stock" or "T. V. A. Units," or anything purporting to be such, or bearing any Government label or signature. All he did was obviously the act of a private citizen, not a Government official. Every check taken was payable to a privately owned and privately published newspaper, and its receipt was issued for all funds received by Pierce. If Petitioner verbally claimed to be a Federal official, the acts done were destructive of that pretense.

The precise point here involved was not before the court in Barnow case, but there is nothing in that decision in conflict with the construction of the statute for which we here contend. In that case, the accused was charged with selling a set of books, entitled "Messages and Papers of the Presidents," as a pretended agent of the United States, the purchaser believing that the Government would receive the money for the publication. It was held that this constituted a violation of the statute, although there was no person authorized to make such sales for the Government and the office, or place of au-

thority, in which the accused assumed to act or officiate, had no legal existence. But "Messages and Papers of the Presidents" was a set of books that had been published under the authority of the Congress (*Bush* v. *United States*, 196 Fed. 579). Its possession and sale under a claim of Federal authority was an apparent official act.

In the instant case, however, it is alleged that the defendants claimed to be "representatives of the Government T. V. A. Units." There was no such thing as "T. V. A. Units," and claiming to sell something, if such a claim was made, that had neither legal nor actual existence, and was neither shown nor described to the purchaser, nor in the evidence, presents a radically different situation from the act of selling "Messages and Papers of the Presidents"—apparently a Government publication. One is a mere verbal declaration; the other a colorable official act.

Where there is no impersonation of a particular individual, known to be a Federal officer by the victim of the intended fraud, it is difficult to understand just how a non-existent Federal office or employment, or a general Federal agency, could be impersonated or assumed without displaying a badge or insignia of authority or performing an apparent official act. It is the pretended official act that brings the case within the operation of the statute.

CONCLUSION.

If a substantial proportion of the hundreds of persons to whom petitioner presented his plan had reached the conclusion that he was connected with, or represented, the Government, or the TVA, there might be some ground on which to hold that he intended to convey such an impression to the person from whom funds were solicited.

But when it is conclusively established that in a presentation of the plan so uniform that it could aptly be

designated as a "canned sales talk" the overwhelming majority of the persons to whom it was presented clearly understood that petitioner was acting in the capacity of a newspaper man, soliciting funds for community advertising, a conclusion to the contrary only being formed in exceptional cases and not then disclosed to petitioner, there is no basis on which to rest a finding that petitioner intended to deceive the prospects to whom his plan was presented.

Considered as a whole, the evidence herein is as consistent with a misunderstanding on the part of government witnesses as to the capacity in which petitioner acted as it is with a fraudulent misstatement by him of that capacity. This being true, the trial court, following the familiar rule that where all the substantial evidence is as consistent with innocence as with guilt, should have sustained the motion for a directed verdict. To hold otherwise is to do lip service to the substantial evidence rule but apply the scintilla rule rejected by this court in *Gunning* v. *Cooley*, 281 U. S. 90.

Furthermore, it cannot be determined on this record whether petitioner was convicted for a claimed representation of, or connection with, the T. V. A., not a federal offense at the time of the transactions involved in this case, or for an impersonation of officers or employees of the government. In that situation, the basis of the verdict being a matter of speculation, the conviction was a denial of due process of law. *Stromberg* v. *California*, 283 U. S. 359.

There is nothing criminal in referring to the Government, or in mentioning the TVA, or in "working in the interest of the Government," or in claiming that community "organization and advertising" would hasten the extension of cheaper power into rural communities. Doubtless, many persons, like the witness Garner who fully understood the plan, believed, that their contributions

would bring cheaper power into their communities "quicker" than it would otherwise come. And this belief may have been encouraged by defendant, but that was a thing separate and distinct from the impersonation of Federal Officials.

It is well settled that each count in the indictment is "regarded as if it were a separate indictment." *Dunn v. United States*, 284 U. S. 390. The sufficiency of the evidence to support a verdict under any count is not established by the "mouths of two or three witnesses" but rests upon the testimony of a single witness.

Human liberty is too priceless to depend upon the accuracy of the recollection of a single witness as to whether a defendant, four years before the witness testified, said he was "working in the interest of the Government," or was a "representative of the Government," or whether he said "TVA units," or simply used the word "units," as a basis for collecting subscriptions to a community advertisement.

Respectfully submitted,

L. E. GWINN,

Attorney for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

J. E. PIERCE,
Petitioner,
vs.
UNITED STATES OF AMERICA.

No. 36.

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER.

L. E. GWINN,
Attorney for Petitioner.

INDEX.

Page

Preliminary Statement:

(a) Correction in original brief 1, 2

(b) Page omitted from original brief 2, 3

Reply to Statement in Government brief:

(a) No evidence petitioner promised "Government" would match contributions 4-6

(b) Checks not read by witnesses who stated that word "advertisement" was written thereon after check signed 6-9

Reply to Government Argument:

(a) Testimony that petitioner claimed to represent Government mere conclusion of witnesses 10-15

No Substantial Evidence of False Impersonation:

(a) Authorities cited and discussed 15-19

(b) Analysis testimony of Government witness Simpson 19-21

(c) No sound basis for any conclusion—That petitioner claimed to represent the Government or the TVA 21-23

(d) Bits and fragments of evidence not adequate basis for correct conclusion 23-25

(e) Material part of the Government testimony inherently improbable 24-26

Refusal of Petitioner's Special Request clear Error 27-33

False Impersonation gist of both offenses created by Cr. Code Section 32 33-35

Conclusion 36-38

TABLE OF CASES.

	Page
American Bell Telephone et al. vs. Peoples Telephone Co. et al., 22 Fed. 309	19
Baas v. United States, 25 F2d, 294 (C. C. A. 5)	34
Connally v. General Construction Co., 269 U. S. 385	33
Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 229	16, 17
Delaney v. United States, 263 U. S. 586, 589, 590	16
Fasulo vs. U. S., 272 U. S. 620	32
Federal Trade Commission v. Education Society, 302 U. S. 112	23
Goodyear Tire & Rubber Co. v. Federal Trade Commission, 101 F2d, 620, 624 (C. C. A. 6)	16, 17
Hilderbrand v. Chicago B. and Q. R. R. Co. 45 Wy. 175, 17 Pac. (2d) 651	16
H. P. Coffee Co. v. Reid Murdock Co., 60 F2d 387, 388	27
Johnson v. C. N. O. T. U. P. Ry. Co. 146 Tenn. 135, 157, 158, 240 SW 429	36
King v. U. S. 279 Fed. 103 (C. C. A. 5)	35
Lamar vs. U. S. 241 U. S. 103	34
Littell v. U. S. 169 Fed. 620 (C. C. A. 9)	34
Messinger v. Anderson, 225 U. S. 436, 443-445	27
Mississippi Valley Trust Co. v. Begley, 310 Mo. 28, 275 SW. 540	16
O'Laughlin v. Helvering, 81 F2d 269 (D. C. Court of Appeals)	16, 17

TABLE OF CASES—(Continued).

Page

Penn. Railroad Co. v. Chamberlain, 288 U. S. 333, 342, 343 ..... 18, 26

Quick Tong v. U. S., 140 U. S. 417 ..... 16, 17

State v. Gregory, 339 Mo. 133, 96 SW (2d) 47, 52, 53 ..... 16, 17

State of Kansas v. Occidental Life Ins. Co., 95 F2d 935, 936 (C. C. A. 10) 27

Thompson Administratrix vs. Maxwell Land Grant & Railway Co., 168 U. S. 451, 456 27

Throckmorton v. Holt, 180 U. S. 551 19

United States v. Barnow, 239 U. S. 74, 36 S. Ct. 19, 60 Law Edition 155 34

United States v. Katz, 271 U. S. 354 33

United States v. McCarl, 275 U. S. 1, 72 L. Ed. 131 ..... 29, 31

United States v. Noveck, 271 U. S. 201 33

United States v. Socony-Vacuum Oil Company, 310 U. S. 150, 254 15

United States v. Strang, 254 U. S. 491, 65 L. Ed. 368 29

United States v. Walter, 263 U. S. 15, 18 30

United States v. Wiltberger, 5 Wheaton 73, 5 L. Ed. 37 33

Washburn, etc., v. Beat 'Em All Barb Wire Co., 143 U. S. 375 19

Woolworth Co. v. Davis, 41 F2d 342, 347 (C. C. A. 10) 16

Worthington v. U. S., 64 F2d 936 (C. C. A. 7) 37

TEXT BOOKS.

Page

Jones on Evidence, 2nd Ed., Vol. 3, Sec. 1070, p. 1769 ..... 19, 25

Wigmore on Evidence, 3rd Ed., Vol. 6, Sec. 1732, p. 102 37

Wigmore on Evidence, 3rd Ed., Vol. 3, Sec. 729, p. 63 22

STATUTES.

U. S. C. A., Title 16, Ch. 12 a., Sec. 831, et seq. 29

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

J. E. PIERCE,
Petitioner,
vs.
UNITED STATES OF AMERICA.

No. 36.

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER.

Preliminary Statement.

Preliminary to a reply to the brief for the United States, attention is directed to the omission of the word "not" in line five from the top of page five of petitioner's original brief in quoting from the testimony of the witness Roach with respect to the expression "TVA Units." As appears in the record, Roach thus testified:

> The first time I ever heard the expression "TVA Units" was after we were arrested in Gibson County. Such an expression was never used by Mr. Pierce in my presence in the presentation of his plan. *He did speak* of "units of advertising"—was divided into 240 units—the plan called for the public underwriting

> $1400.00 and the newspaper underwriting $1000.00. Mr. Pierce did not tell anyone in my presence that the Government would match the funds contributed by the sponsors."

There are other typographical errors in petitioner's original brief but as these errors are either obvious or do not materially change the meaning of the language used or quoted, they will not be directed to the attention of the Court.

In sending the manuscript of the original brief to the printer there was omitted a page therefrom that should have followed page 37 and as that page furnished a connecting link between the preceding discussion of the testimony of the Government witness Anderson and the reference to the testimony of petitioner's witness Bringle (Brief 38) we produce it here.

"Petitioner's advertising campaign had one objective in common with the Tennessee Valley Authority, to-wit, the promotion of cheaper power in rural communities.

Failure to distinguish between an officially sponsored program and a newspaper enterprise, having a common objective, this failure being the result of superficial observation and careless listening, is doubtless the key to the unwarranted conclusion reached by Anderson as to the capacity in which petitioner was acting.

But in the absence of any specific inquiry as to the relation, if any, which petitioner sustained to the Federal Government or any suggestion by Anderson that he was under the impression that petitioner was acting in an official capacity, there is no factual basis on which pe-

titioner can be held responsible for the confusion or misunderstanding of Anderson. The check which Anderson signed was written by his bookkeeper, not by petitioner. It was payable to petitioner's newspaper and showed that it was given 'for advertising.' Petitioner's connection with that paper had been previously disclosed to Anderson. The receipt, which was also given Anderson's bookkeeper in the presence of the latter, was not folded but open, and this receipt was on the printed billhead of the paper. (R. 28, 35, 37.) What more should petitioner have done to show the capacity in which he received the money and the purpose for which it was paid to him? And upon what theory consistent with fairness and justice can petitioner be held responsible for a misunderstanding on the part of Anderson, reached under the circumstances stated?

It would serve no useful purpose to make a detailed analysis of the testimony of other witnesses who reached the conclusion without justification that petitioner represented the Federal Government. However, we shall refer to a few additional facts and circumstances that support our contention that the Government testimony consists of hasty impressions and unwarranted conclusions that present no substantial conflict with the crushing weight of opposing testimony.

Many of the Government witnesses testified that TVA and cheaper power 'meant the same thing to them' (R. 40, 47, 51, 69, 71, 78, 79, 124, 329)."

Statement in Government Brief.

Bits of evidence and conclusions of witnesses are so blended at pages 6 and 7 of the Government brief as to present a picture that is materially different from that actually presented by the record.

To illustrate:

> At page 6, referring to petitioner, it is said:
> "He explained that the Government would match, dollar for dollar, the contributions which the citizens of the county made (R. 24, 27, 31, 44, 54-55, 59, 66, 69, 74, 77, 81, 107, 116, 120)."

(a) Pages 24, 27, and 31 of the record citations in the above quotation refer to the testimony of the witness Anderson. This witness did not pretend to be able to state the exact language used by petitioner (R. 33). It has been heretofore shown (see petitioner's brief pages 34-37) that his conclusions were without adequate factual basis. Therefore his testimony will not be further discussed.

(b) The citation of record pages 54, 55, refers to the testimony of the Government witness Witt, his testimony relating to Count 2. This witness, in answer to a direct question, testified that he was not positive as to whether petitioner said "we" or used the word "government" with respect to contributions that would be matched (R. 54-55). This witness further testified that his recollection when he testified at Medina, two or three days after the transaction occurred, was clearer than when he gave his testimony at the trial. It appears without dispute that in his Medina testimony he stated positively that he did not "remember" petitioner saying

anything about the "United States Government" (R. 55, 287).

(c) The citation of record page 59 refers to the testimony of the Government witness Utley, relating to Counts 4 and 5. Utley did not testify that petitioner so much as mentioned the "government" in his conversation with that witness, and quoted him as using the word "*we*" with respect to supplementing contributions made by the community.

(d) The citation of record pages 66 and 69 refers to the testimony of the Government witness Blackman, relating to Counts 14 and 15. This witness did testify on direct examination that petitioner said the Government would match contributions but when his attention, on cross examination, was directed to the language actually used by petitioner, he stated that petitioner said "we", not the Government, and that his conclusion that petitioner meant the Government was based on the witness' observation of the word "TVA" as a feature headline in one of the newspapers exhibited to the witness. (R. 70-71.) Incidentally, it may be stated that among the papers exhibited to the prospects from whom funds were solicited, things other than the TVA were featured in the headlines, "TVA" as a feature headline, or one that spread across the entire page, appearing in only one of the many papers in the bundle used in demonstrating the plan (R. 199).

(e) The citation of pages 74 and 77 refers to the testimony of the Government witness Simpson, relating to Counts 11 and 12. But this witness at the preliminary hearing at Medina, when the matter was fresh in his recol-

lection, did not testify that the Government would match contributions but that these would be supplemented by the "*concern*" with which petitioner "*was connected*" (R. 288).

(f) Page 120 is the only additional citation of the record in the above quotation from the Government brief that refers to the testimony of an indictment witness. The reference is to the testimony of Conyers, relating to Counts 16 and 17. But neither at that page nor any other does Conyers quote petitioner as saying the "Government" would supplement contributions.

For the sake of brevity, and because such is more material than that of other Government witnesses, we have restricted our discussion of the statement quoted from the government brief to the testimony of indictment witnesses, that is those testifying directly to a transaction involved in the indictment, and it is clear from an analysis of their testimony that petitioner did not state that the Government would match or supplement contributions made by local communities, but that this was a mere conclusion of these witnesses that resulted from the statement actually made by petitioner that "we", meaning his paper, would take care of a stated proportion of the costs of the advertisements of the counties. (R. 151, 168, 250.)

At page 7 of their brief, government counsel, referring to petitioner, say:

> "On at least three occasions he stated that he was required to make daily reports to Washington (R. 25, 61, 132)."

Only one of the foregoing citations of the record refers to an indictment witness, this being Harris Utley, and we shall briefly state his and other related testimony on the point represented in the above quotation.

At the first trial Utley testified that petitioner, in refusing the witness credit, said he had to "wire the money in every night" (R. 61). He supplemented this statement at the present trial by further testifying that he heard petitioner state to Joe Luckey, one of the Government witnesses, at Medina that he could not make a refund of $10.00 to that witness because he "wired the money to *Washington* every night" (R. 61). Luckey, however, recalled and asked about this statement, reiterated the testimony that he had given at Medina almost contemporaneous with the claimed conversation, in which he testified that defendant said the money "had gone into headquarters in *Alabama*" (R. 65).

In explanation of his new testimony in regard to the disposition of funds by Pierce, Utley stated that he did not tell at the first trial what petitioner said to Joe Luckey because he did not think it would be competent (R. 61). Here is what, according to the testimony of the court reporter, Utley actually testified at the first trial as to the wiring of funds:

> "Q. Did he say, (referring to Pierce) where he had to wire it to?
>
> A. No, sir, he did not say where he had to wire it to. He just said he had to wire the money in every night." (R. 234.)

At page 8, referring to a letter written on the stationery of the Huntsville Daily Register, signed by the corporation publishing that paper through William H.

Pierce, its president, and stating various business and civil enterprises with which petitioner was connected and the work he was undertaking in behalf of that paper, government counsel said:

> "In one instance, however, petitioner apparently offered it as a credential of his status as a government representative (R. 81-83)."

The record citation refers to the testimony of the government witness J. T. Mathis. With respect to the testimony of this witness it is the contention of petitioner that the inherent improbability that he would claim that this letter was a government credential and submit it as such for the inspection of a person who asked for his government credentials, is strengthened by an examination of the testimony of Mathis. For instance, among other things, he states that it was submitted as a government credential in the presence of the government witness Graves and petitioner's witness Roach and that he stated very emphatically in the presence of these witnesses that the letter thus submitted for inspection was not a government credential (R. 82). Graves did not corroborate him. Petitioner and Roach directly contradicted him.

At page 8 of the Government brief this statement is made:

> "The checks which were introduced at the trial also bore on their face the words "For Advertising" in petitioner's handwriting, but three of the witnesses stated positively that the words had not been on the checks when they had signed them (R. 67, 92-93, 122)."

All the checks were not in petitioner's handwriting. (R. 28, 208, 244). But that is not the point stressed in reply to the above statement. True it is that three of the witnesses testified that the words "for advertising" were not on the checks when they were signed by the witnesses but it is equally true that each of these three witnesses testified that he did not observe to whom the check was payable nor read it further than to observe the amount for which it was payable (R. 73, 98, 99, 122, 128, 129). To emphasize the point stated we quote from the testimony of one of these witnesses, Frank Blackman, on direct examination.

> "Q. Did you notice who it was made payable to?
> A. No, sir.
> Q. Did you notice the word 'advertising' on it?
> A. No, sir, that wasn't on there." (R. 67.)

On cross examination Blackman thus testified:

> "I gave him a check and since I have read it I see it is payable to the Huntsville Register or bearer. *I didn't read the check when I signed it.* I just saw the $20.00 on there. There was nothing to have kept me from reading the check. It was plain daylight, around 5:00 o'clock when I signed it. The receipt was on the printed billhead of the Huntsville Daily Register and I had no difficulty in understanding what it was for when I read it. Mr. Pierce may have stayed about 15 minutes.
>
> Q. And the check and the receipt were all parts of the same transaction in which you paid him the money?
>
> A. Yes, sir, I gave him a check and he gave me a receipt. (R. 73.)

I.

THE GOVERNMENT ARGUMENT.

At page 19 of their brief government counsel said:

> "From the foregoing it appears that with respect to at least six of the fifteen counts upon which the petitioner was convicted (9, 10, 11, 12, 20 and 21) the proof showed that the petitioner had explicitly declared that he was a representative of the Government. The testimony of witnesses who were allegedly defrauded, according to three other counts (2, 14, and 15), was that the petitioner had told them that he was selling TVA units and that the Government would match their contributions."

With respect to the claimed testimony that the "Government" would match contributions, we have heretofore shown that such testimony was a mere conclusion and nothing more.

The assertion of government counsel that the proof shows that petitioner "explicitly declared that he was a representative of the Government" with respect to the transaction involved in Counts 9, 10, 11, 12, 20 and 21 is also destitute of any sound factual basis.

Counts 9 and 10 relate to a transaction with the Government witness, Clarence Luckey. This witness testified that he did not fully understand the plan when it was presented to him; that he was stating his understanding thereof without any "ability to recall the exact language that was used" (R. 110, 112); that he paid little or no attention to the newspaper demonstration; that he did not recall what was said about good roads or the development of the natural resources of the com-

munity or about advertising (R. 111). He stated that his recollection as to what was said was much clearer when he testified at the preliminary hearing and it appears that at that hearing Luckey testified that petitioner "pulled out a newspaper and talked something about some kind of advertising" (R. 288).

Counts 11 and 12 relate to a transaction with the government witness, J. H. Simpson, who testified that petitioner stated that he was "representing the Government" and that the "Government would match" community contributions. This witness testified in a preliminary hearing at Medina shortly after his transaction with petitioner.

It appears from the transcript of the Medina testimony that Simpson there testified that petitioner said he was "putting on a program to help get Muscle Shoals power through this community," and that the community would unt up $1,400 and the "concern with which he (Pierce) was connected would put up the balance." (R. 288).

Simpson testified that his recollection as to what was said by petitioner was much clearer when he testified at Medina than it was at the time of the trial (R. 80); and this, according to his own admission, is the testimony he there gave when the matter was fresh in his recollection.

> "Question: Do you recall seeing this Mr. Roach here and Mr. Pierce over there yesterday or day before?
>
> Answer: Day before yesterday evening.
>
> Question: Where were you?
>
> Answer: Tomato patch, when I was called out.

Question: Ever met them before?
Answer: No.
Question: What did they say to you when they came up?
Answer: Well, they just hollowed 'hello, John.'
Question: Is that your given name?
Answer: Yes.
Question: Then what did they do?
Answer: They said they was in here working in the interest of TVA.
Question: Did they want to sell you anything or not?
Answer: Some units for Muscles Shoals.
Question: Did they explain to you what a unit was?
Answer: No, really didn't.
Question: What did they propose to do if you would buy a unit?
Answer: They said it would help to get Muscle Shoals or the lights in here, and if I would buy a unit, why they would give just as much as I would buy, the other in connection with it.
Question: How much did you buy?
Answer: I bought two units.
Question: Paid them $20.00?
Answer: Yes.
Question: What did they do as soon as you paid them?
Answer: Handed me a receipt and was gone.
Question: Did they write that out before you?
Answer: Yes, right over the fence from me.
Question: What bank was your check drawn on?
Answer: Medina Banking Company." (R. 79, 80.)

On the second trial Simpson in response to a direct question by the District Attorney as to whom petitioner claimed to represent answered: "He was representing the TVA; Muscle Shoals." (R. 327).

Counts 20 and 21 relate to a transaction with J. B. Cherry. On direct examination, speaking of petitioner, he said:

> "He told me the purpose he was there for—there in the interest of the Government, selling the people of Crockett County TVA Units or Stock." (R. 91.)

On cross examination he admitted that petitioner did not say anything about "stock" (R. 27). During his cross examination, however, he quoted petitioner as saying he was "representing the Federal Government; selling TVA Units" (R. 96). But with respect to the language used by petitioner, Cherry further testified:

> "Well that has been three years ago, and I might not quite (quote) just exactly—you don't remember three years what you said to a man, and what he said to you." (R. 97.)

It also appears from Cherry's testimony that petitioner informed the witness that he would receive a newspaper and discussed with him at some length the question of advertising (R. 96-98). Furthermore, Cherry, on the second trial, when asked to detail the statement made by petitioner, did not mention the word "Government" but thus testified:

> DIRECT EXAMINATION:
>
> "Q. Go ahead in your own way and tell the jury all conversations from the time you first saw him; who introduced you, if anyone; who was with him and the exact conversation that took place between anybody there on that occasion?
>
> A. Well, Mr. Pierce and Mr. Roach had been down at my home and I was away from home . . . and he (Mr. Pierce) was in the car and met me in the highway in the road and stopped and threw up his

hands, and this man Pierce got out of the car and I got out of my car, too. When I come up close he said 'hello, J. B.' That's my initials, J. B., and he was so friendly to me and talked so nice to me and I looked at him the second time and I said 'you have the advantage of me; I don't believe I know you.' He introduced himself to me then and told me his position. He said he was there to sell some TVA units or stock to us farmers of Crockett County and other counties and insisted on me taking $100.00 worth of units—stock in TVA.

CROSS EXAMINATION:

Q. He told you he was carrying on a campaign promoting better roads and lower taxes and cheaper power, didn't he?

A. He said something about we would have better roads and cheaper taxes, yes, sir." (R. 330.)

Cherry was a Deputy Sheriff of Crockett County, this being known to petitioner (R. 94). Petitioner's conversation with Cherry occurred in the presence of another Deputy Sheriff who accompanied him in his canvass of Crockett County (R. 93).

Cherry's check showed that it was given "for advertising". The receipt, which Cherry admits he glanced over, was on the printed billhead of the Huntsville Daily Register and plainly showed the purpose for which the money was received by petitioner (R. 100, 101).

The record shows that petitioner was a man of superior qualifications as a solicitor of advertising and it is the theory of the Government (Brief page 10) that he was making in many instances a "self serving record". If this be true, is it not inherently improbable

that under the circumstances disclosed by the testimony of Cherry, a deputy sheriff, that petitioner would have falsely represented to that witness, in the presence of another Deputy Sheriff, that he was a representative of the Federal Government and have furnished him a written record that would show and probably result in immediate detection and exposure of the false impersonation of an officer of the Federal Government?

In selecting individual words or phrases from the testimony of various witnesses, and in assembling these fragmentary utterances in an apparently connected whole, government counsel build a premise which, as we construe the evidence, leads to a wrong conclusion. We therefore feel justified in such further discussion of the facts as seems reasonably necessary to establish the unsound premise on which the Government rests its conclusion that the verdict is sustained by substantial evidence.

NO SUBSTANTIAL EVIDENCE OF FALSE IMPERSONATION.

Before further discussing the facts, we shall briefly state the applicatory law as we conceive it.

1. Where a motion for a directed verdict, duly made, is considered by the trial court and the Circuit Court of Appeals, and certiorari is granted by this Court, the facts will be considered not for the purpose of weighing the evidence but to ascertain whether there is any "competent and substantial evidence" to sustain the verdict. U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150. The Government brief at pages 14 and 15 thereof apparently

contends that this court is bound by the conclusion of the lower courts as to the sufficiency of the evidence, and cites Delaney v. United States, 263 U. S. 586, 589, 590 on the point stated. No such rule was pronounced in the Delaney case but it was there said that it required "something more than ingenious criticism" of the evidence by counsel to warrant this court in setting aside a verdict that had been approved by the lower courts. There is no conflict between the holding in the Delaney case and the later decision in the Socony-Vacuum Oil Case. Certiorari being a discretionary writ, it may be that this court would not grant it if no question other than the sufficiency of the evidence was presented but having taken jurisdiction, there is no sound reason why this Court should not consider the facts to the extent indicated in the Socony-Vacuum Oil Company case.

(2) To be classified as "substantial", the evidence must be competent, credible, and such as a reasonable mind might accept as adequate to support a conclusion. Edison Company v. National Labor Relations Board, 305, U. S. 197, 229; Quick Tong v. U. S., 140 U. S. 417; Woolworth Co. v. Davis, 41 F2d 342, 347 (C.C.A. 10); O'Laughlin v. Helvering, 81 F2d 269 (D. C. Court of Appeals); Goodyear Tire and Rubber Co. vs. Federal Trade Commission, 101 F2d 620, 624; Mississippi Valley Trust Co. v. Begley, 310 Mo. 28, 275 S. W. 540; Hilderbrand v. Chicago B. and Q. R. R. Co. 45 Wy. 175, 17 Pac. (2d) 651; State v. Gregory, 339 Mo. 133, 96 SW (2d) 47, 52, 53.

In Edison Co. v. National Labor Relations Board, supra, this Court said:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

And this in Quick Tong v. U. S., supra:

> "There may be such inherent improbability in the statement of a witness as to induce the court or jury to disregard it, even in the absence of any direct conflicting testimony."

In Goodyear Tire and Ruber Co. v. Federal Trade Commission, supra, the Court of Appeals for the 6th Circuit said:

> "The persuasiveness of evidence may upon occasion be destroyed by analysis even though uncontroverted." (101 F2d 624.)

In State vs. Gregory, supra, the court, citing decisions from this court and stating that the rule in Missouri was in harmony therewith, said:

> "Now, since the test of substantial evidence is whether a jury reasonably could find the issue thereon, the result must depend in some measure on the degree of persuasion required. In a criminal case liberty and sometimes life are involved, and there cannot be a conviction except upon a finding of guilt beyond a reasonable doubt. Necessarily, therefore, it becomes the duty of an appellate court as a matter of law to determine whether the evidence was sufficient to induce a belief of the defendant's guilt beyond a reasonable doubt in the minds of jurors of average reason and intelligence; and in resolving that question the court undoubtedly can pass on the credibility of the testimony to the extent of determining

> whether it was substantial in the sense above explained. In no other way can the rights of the defendant be protected. It would be an incongruous situation if the court were compelled to let a conviction stand as being supported by evidence warranting a verdict of guilty beyond a reasonable doubt, when for any reason made manifest on the record the evidence could not reasonably support a conviction. In so holding we are not to be understood as departing from the rule announced in the long line of recent cases cited above that this court will not weigh the evidence in a criminal case if the verdict below was supported by substantial evidence. This rule presupposes that there was evidence from which the jury reasonably could have returned a verdict of guilty."

In O'Laughlin v. Helvering, supra, speaking of the general rule that uncontradicted evidence will be accepted as true, the court said:

> "But the rule is subject to many exceptions, among which is the inherent improbability of the facts testified to. 'It is a wild conceit that any court of justice is bound by mere swearing; it is swearing credibly that is to conclude its judgment.' "

3. Where the evidence is so overwhelmingly on one side as to leave no room to doubt what the fact is, the trial court should give preemptory instructions to the jury, and no verdict, based on testimony not reasonably believable, should be sustained as against positive testimony to the contrary of unimpeached witnesses. Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333, 342, 343.

4. Testimony concerning oral statements, and particularly where the exact language of the declarant is a ma-

terial consideration, is inherently weak and dangerous. Throckmorton v. Holt, 180 U. S. 551; Washburn, etc., v. Beat 'Em All Barb Wire Co. 143 U. S. 375; American Bell Telephone Co. v. Peoples Telephone Co. et al, 22 Fed. 309; Jones on Evidence, 2nd, ed., Vol. 3, Sec. 1078, p. 1969.

Measured by the foregoing principles, the government testimony does not rise to the dignity of substantial evidence that will support a verdict.

That testimony is a hodge-podge of inconsistencies, exaggerations, contradictions and conclusions, either unsupported or resting upon a flimsy basis. Considered as a whole, the government testimony is so destitute of probative value as not to present a substantial conflict with the positive opposing testimony on the issue of false impersonation.

The testimony of J H. Simpson, relating to Counts 11 and 12, has been discussed at some length (ante p. 11). As his testimony is as strong as that of any other indictment witness, we shall further discuss it and compare it with opposing testimony to show that Simpson's testimony, upon a fair analysis thereof, does not raise a substantial conflict with that of petitioner and his witness on the issue of false impersonation as it relates to Counts 11 and 12.

On direct examination, Simpson testified that petitioner claimed to be "representing the *Government* selling TVA" (R. 73) and stated that the "*Government* would match dollar for dollar" community contributions (R. 74).

But that is only a part of his testimony.

On cross examination, Simpson testified:

(1) That petitioner exhibited newspapers to him, informed him that he would receive the paper, and offered to advertise any property he had for sale (R. 74, 75, 77, 78).

(2) That petitioner said "*he* would match dollar for dollar" community contributions (R. 77), and that petitioner told him that he was "working *in the interest* of the Government and promoting cheaper power." (R.77.)

(3) That the matter was fresher in his mind when he testifid at the preliminary hearing at Medina shortly after the transaction occurred than it was at the time of this trial (about four years later) and that in his Medina testimony he quoted petitioner and Roach as saying that "they was in here working in the interest of the TVA" (R. 79); that they wanted to sell him "some units for Muscles Shoals" (R. 80); that they did not "explain what a unit was" but said it "would help to get Muscles Shoals or the lights in here, and if I would buy a unit, why *they* would give as much as I would buy, the other in connection with it" (R. 80).

It also appears from the transcript of the testimony at the preliminary hearing that Simpson there testified that petitioner said "*he was putting on a program to help get Muscles Shoals power through this community,*" and further, that if the community would raise $1400 the "*concern with which he (petitioner) was connected would put up the balance*" (R. 288).

With respect to the transaction with Simpson, here is the evidence for petitioner:

(1) His own positive testimony that he did not claim to be a representative of the Government or the TVA nor promise that the Government or the TVA would match community contributions, but did state that he or his paper would bear part of what would be the usual cost of a series of page advertisements (R. 143, 150).

(2) The positive testimony of Roach to the same effect (R. 260).

(3) Simpson's check, signed by him, showing that it was for "advertising" (R. 74).

(4) The receipt, written in Simpson's presence (R. 80), on the printed billhead of the Huntsville Daily Register, showing the purpose for which the money was paid and received.

In considering the government testimony, it is well to bear in mind that all or most of these witnesses were either in an unusual hurry when the plan was presented to them or paid little attention to its presentation as a whole (R. 50, 70, 100, 101, 105, 110, 128, 134). "I wasn't paying much attention. *I had my mind on something else*" was the testimony of the government witness, Joe Luckey, with respect to the exhibition of newspapers, carrying page advertisements of counties previously canvassed. (R. 48.) "He (petitioner) was talking pretty fast. I was wanting to sow soy beans and *I wasn't getting all of it*" is the testimony of the government witness Frank Blackman (R. 70). "I didn't pay any attention to the demonstration of the use made there of the paper" is the testi-

mony of Clarence Luckey (R. 110). "*I didn't pay a bit of attention*" is the testimony of the government witness Couch with respect to the letters read to him by petitioner (R. 118). "I did not give it that much time" is the testimony of the government witness Conyers when asked if he made any inquiries of petitioner (R. 128). "I didn't know . . . I reckon I should have understood more about it" was the answer of Clarence Luckey when asked what he thought a "TVA Unit was" (R. 112).

In a canvass of the character made by petitioner, involving the securing of many small subscriptions, but little time could be given to the average presentation. Petitioner briefly and rapidly presented the plan, and discussion was not prolonged whether the prospect contributed or refused (R. 256).

The brevity, rapidity and character of its presentation necessarily required the undivided attention of the prospect in order that he might understand the purpose of his contribution, but that attention, as the foregoing references to and quotations from their testimony clearly show, was not given by government witnesses. As a result, their impressions or conclusions were based on fragmentary statements and not upon petitioner's conversation and demonstration as a whole. In this situation, it is not so much deficient observation or recollection but disregard of the principle of completeness that weakens the probative force of government testimony to the vanishing point. Wigmore on Evidence, 3rd. ed., Vol. 3, Sec. 729, p. 63.

It is our contention that the testimony of each witness should be considered as a whole and also in the light of undisputed facts established by other testimony, that

when so considered it clearly shows that the sales talk of petitioner was substantially the same to all prospects, this being practically conceded at page 6 of the Government brief, and that the overwhelming majority of the persons to whom this sales talk was made understood that petitioner was soliciting funds for community advertising that had as one of its objectives the promotion of cheaper power. To "pick and choose bits of evidence" that would support a finding to the contrary is to follow a practice condemned by this Court in Federal Trade Commissions v. Education Society, 302 U. S. 112, but that is apparently the course that has been followed in the preparation of the brief for the Government.

Disregarding such a method, and considering the evidence as a whole, leads inevitably to the conclusion that the verdict does not rest upon substantial evidence of guilt. A few questions, based upon indisputable evidence, will emphasize the contention stated.

(1) If petitioner pretended to be an officer of the United States or the Tennessee Valley Authority, would he also have introduced himself as the editor and publisher of a newspaper, exhibited copies of that paper, containing page advertisements of counties previously canvassed, and stressed the importance of advertising in promoting the objectives of his campaign? Such introduction, discussion and demonstration are shown by the testimony of all, or practically all, of the indictment witnesses, and by other testimony.

(2) If petitioner claimed to be selling TVA units as a representative of the Government, is it probable that he would have gone beyond the discussion of the bene-

fits of cheaper power and have emphasized the importance of good roads and lower taxes and asked permission of the subscriber to quote him in petitioner's newspaper as an advocate of these things? Such emphasis and request are clearly established by the government testimony (R. 41, 43, 47, 57, 60, 79, 330).

(3) Unless acting in behalf of a newspaper with which he identified himself, and believing that the capacity in which he thus acted was understood by the person from whom funds were obtained, is it probable that petitioner would have offered to advertise without additional cost to the subscriber any property he had for sale, and also have sought and obtained the names of the members of his family to be published in petitioner's newspaper? That such offer was made and information obtained from the subscriber appears without dispute in the record (R. 163, 166).

(4) Is it not inherently improbable that petitioner, dealing with men of the intelligence and experience of the indictment witnesses, would have offered to sell them "TVA UNITS"—something that had neither actual nor potential existence, or that he would have expected them to make a subscription therefor without either explanation or inquiry as to what a "TVA UNIT" was?

Irrespective of the obvious partisianship of many of the Government witnesses, resulting in the improper injection into their testimony of statements that petitioner "*faked*" them, "*frisked*" them, "*beat them out of their money,*" made a "*quick-get-away*" (R. 60, 89, 101) and similar expressions of bias and prejudice; their bringing of civil suits and institution of prosecution in the

State Courts, in which they were represented by the same attorney, and the numerous conferences, both before and after the magistrate's trial, in which they talked the matter over (R. 52-56, 79, 101); the reckless swearing of some of them with respect to what appeared on checks they did not read; the emphatic denial of one of them that he personally signed his check, a denial persisted in until the check, bearing his signature, was exhibited to him (R. 30); such irreconcilable contradictions as that in the testimony of M. R. Lewis, who thus testified with respect to what was done by petitioner and Roach; "They showed me some advertisements of different counties where they had worked in" . . . "they didn't show the advertisements" (R. 105); and the inconsistencies that clutter the testimony of Government witnesses, it is respectfully insisted that such testimony is not sufficiently clear and cogent to present a real conflict with the evidence adduced in behalf of petitioner.

In Jones on Evidence, 2nd Edition, Vol. 3, Sec. 1079, p. 1769; the learned author says:

> "Witnesses having the best of motives are generally unable to state the exact language of an admission, and are liable, by omission or change of words, to convey a false impression of the language used. Furthermore, no other class of testimony affords such temptations or opportunities for unscrupulous witnesses to distort the facts or commit open perjury . . ."

In this case *all the reasonable probabilities*, all the *testimony of a positive character, relating to a transaction of petitioner with an indictment witness, considered in its entirety*, and *all the documentary evidence*, including

checks personally signed by many of these witnesses and receipt placed in the hands of each of them as a part of the transaction, sustain the contention of petitioner that he was soliciting funds for publicity advertising that had as one of its objectives the promotion of cheaper power. Opposed to this is Government testimony that is a composite of impressions and conclusions, based upon faulty recollection, deficient observation and inattention, these appearing without dispute in the record, and petitioner insists that such evidence does not present a conflict with the positive testimony in his behalf. Penn. Railroad Co. vs. Chamberlain, supra.

To sustain a verdict, both law and justice require something more than shadowy conclusions, arising from prejudice or misunderstanding, and such conclusions are the sole basis for the verdict in this case.

II.

THE REFUSAL OF PETITIONER'S SPECIAL REQUEST WAS CLEAR ERROR.

The Government brief (pp. 22-33) defends this refusal on three grounds, to-wit:

(1) The instructions in the general charge (Government brief page 25). Government counsel state this ground more in the nature of a suggestion than a contention. It was fully covered and shown to be untenable in petitioner's original brief (pp. 46-50).

(2) The request contained no qualification that if petitioner, in stating that he represented the TVA, meant to convey and did convey the impression that he was an

officer or employee of the Government he could be convicted. But the point insisted upon in the qualification was included in the general charge (R. 306). There was, therefore, no need to re-state it in the special request which dealt exclusively with the status of the Tennessee Valley Authority, that is, whether it was a separate corporate entity or a department of the Government. Of course, this request should not be given a technical construction either to justify its refusal or to put the trial court in error in failing to give it.

(3) That Section 32 of the Criminal Code, as it existed when the transactions involved in the indictment took place, should be construed as extending to officers or employees of the Tennessee Valley Authority. This is the principal contention made by Government counsel in defending the refusal of the special request (Government Brief, pp 25-34). The contention thus made is not tenable. Our reasons for so stating are:

1. So far as the trial court was concerned, the construction of the statute on the first appeal established the law of the case. Thompson Administratrix vs. Maxwell Land Grant & Railway Co., 168 U. S. 451, 456; H. P. Coffee Co. vs. Reid Murdock Co., 60 F2d 387, 388; State of Kansas vs. Occidental Life Insurance Company, 95 F2d 935, 936.

It is not contended that this Court in construing the statute is restricted by the decision of the Circuit Court of Appeals on the first appeal in this case. This Court is free when the case comes here to construe the statute regardless of its construction on that appeal. Messinger vs. Anderson, 225 U. S. 436, 443-445.

But that is not the point involved in the consideration of the special request.

The principle expressed in the phrase "law of the case" rests upon sound public policy (State of Kansas vs. Occidental Life Insurance Co., supra.), and to permit the trial court in a subsequent trial to disregard the "law of the case", established in the construction of the statute, on the first appeal, violates the basic principle expressed in the rule. On the first appeal Section 32 of the Criminal Code was construed as *not* extending to officers or employees of the Tennessee Valley Authority (this construction was reiterated on the second appeal) but the holding was evaded in the trial of the case. In addition to the refusal of the request, clearly applicable to facts developed at the second trial, the evasion of the ruling of the Court of Appeals by the trial court is to some extent shown by the grouping of the counts for punishment stated and emphasized at page 20 of the Government brief.

2. But assuming that the construction of Section 32 of the Criminal Code, as it relates to officers or employees of the Tennessee Valley Authority—a corporation—is an open question in this Court as it relates to the refusal of the special request under consideration, we respectfully insist that the Government's contention that officers or employees of that corporation are included in the operation of the statute, as it existed prior to the 1938 amendment, is without merit.

The Tennessee Valley Authority, although an instrumentality of the Government which owns all its stock, is a corporate entity distinct from the government itself,

and its employees are not within the purview of Section 32 of the Criminal Code. Unitd States vs. Strang, 254 U. S. 491, 65 Law Edition, 368; United States vs. McCarl, 275 U. S. 1, 72 Law Edition, 131.

The corporation created by The Tennessee Valley Authority Act of 1933 (U. S. C. A., Title 16, Ch. 12a, Sec. 831, et seq.) is vested with the usual powers of a private corporation, including the right to "sue and be sued in its corporate name" (Sec. 831-c).

Section 831-b provides for the appointment of officers and agents of the corporation "without regard to the provisions of the civil service laws applicable to officers and employees of the United States."

As to Federal penal statutes, Section 831-t of the Act contains this provision:

> "All general penal statutes relating to the larceny, embezzlement, conversion, or the improper handling, retention, use or disposal of public moneys, or property of the United States, shall apply to the moneys or properties of the corporation, and the moneys and properties of the United States entrusted to the corporation."

Section 831-t provides penalties for the making of false entries or reports with intent to deceive any officer of the corporation, or any officer of the United States.

The foregoing exclusions and inclusions of civil and penal Federal statutes, as these affect employees of the corporation, are clearly indicative of the intent of Congress *not to include* such employees in the general Federal statutes, applicable to officers, agents and employees of the Government.

Government counsel, however, insist that the purposes and language of Section 32 of the Criminal Code are broader than those of Section 41, construed by this Court in United States vs. Strang, supra. But that contention, if conceded, does not affect the situation here. With respect to what constitutes an "officer or agent" of the United States and whether an officer or agent of a government-owned corporation is such an officer or agent, there is no material difference between Section 41, before this Court in the Strang case, and Section 32 here under consideration.

In support of their contention Government counsel rely heavily on United States vs. Walter, 263 U. S. 15, 18 (Brief p. 30).

But that case is not in point on the question presented by the refusal of the special request. It did not involve the construction of any statute as it extended to officers or agents of the Government nor the relation to the Government of officers or agents of a government-owned or government-controlled corporation. Section 37 of the Criminal Code, before this Court in the Walter case prohibits a conspiracy to "defraud the United States in any manner", and it was held that a contemplated fraud upon a government-owned corporation came within the operation of the statute. To "defraud the United States in any manner" necessarily includes a fraud that might result in a pecuniary loss or injury of any kind to the Federal Government, and this Court so held in the Walter case, but there is little or no analogy between the situation in the Walter case and that presented by the special request of petitioner.

The Fleet Corporation—a government-owned corporation—like the Tennessee Valley Authority, was an "instrumentality" of the Government. United States, ex rel vs. McCarl, 275 U. S. 105. In the McCarl case, although holding that the Fleet Corporation was an "instrumentality" of the Government and citing United States vs. Walter, supra., this court reiterated the ruling in United States vs. Strang, supra., that employees of that corporation were not agents of the United States, subject to the provisions of Section 41 of the Criminal Code.

In the McCarl case this Court recognizes the development and importance of government-owned corporations, but the decision is in disagreement, not accord, with the contention apparently made by Government counsel herein that the importance of these corporations justifies an extension by judicial construction of the provisions of prior federal statutes. Recognition of the increasing importance and activities of such corporations as instrumentalities of the government was doubtless the reason for the amendatory act of 1938, extending the scope of Section 32 of the Criminal Code so that it would reach the impersonation of officers or agents of government-owned or government-controlled corporations. But that amendment was subsequent to the acts complained of in the indictment in this case.

At page 28 of the Government brief it is asserted:

> "The only genuine question raised by this development in connection with Section 32 is whether the government corporation is generally regarded by ordinary men as a part of the government itself. This is not a question for the lawyer; it is an empirical question, and its answer is clear."

The foregoing contention at least has the merit of novelty. But that is its only merit. If it means anything it means that contemporary public opinion is the controlling consideration in construing an earlier passed penal statute.

New situations may call for a new application of statutory or constitutional provisions but that does not mean that the plain terms of a penal statute may be extended by judicial construction to include persons or acts not within its scope when it was originally passed, even though these acts may be regarded as equally or more reprehensible than those included within the operation of the statute. Fasulo vs. U. S. 272, U. S. 620.

Many of the criteria by which the meaning of a statute is to be determined are stated by this court in United States vs. Katz, infra, but these criteria do not include the opinion of "ordinary men" or any other class of men with respect to conditions arising subsequent to the passage of the statute as a test in determining its meaning.

The argument at pages 25-29 of the Government brief is one that should be directed to a legislative and not a judicial tribunal. It states sound reasons for the extension of Section 32 of the Criminal Code so as to bring within its scope the impersonation of officers or agents of Government-owned or Government-controlled corporation. Doubtless these reasons were duly considered by Congress in the adoption of the 1932 Amendment to Section 32, but that amendment was passed subsequent to the transactions involved in the indictment. Put bluntly, Government counsel are asking this Court to so construe

Section 32 as to make that amendment applicable to transactions that occurred before its passage.

At page 33, Government counsel in their brief state that the history of the 1938 Amendment is as "consistent with uncertainity regarding the scope of section 32 as it is with any belief that cases such as the instant were not covered".

But it is an established principle that penal statutes must be *certain* and that before one may lawfully be punished thereunder his case must be clearly within the provisions of the statute. Any reasonable doubt as to its meaning must be resolved in favor of the liberty of the citizen. U. S. v. Wiltberger, 5 Wheaton, 73, 5 L. Ed 37; Connally v. General Construction Co., 269 U. S., 385; U. S. v. Noveck, 271 U. S., 201; U. S. v. Katz, 271 U. S., 354; Fasulo v. U. S., 272 U. S. 620.

If the uncertainty of the statute was such as to require clarifying legislation, and that uncertainty affects acts for which petitioner was indicted, then he should not be convicted for doubtful acts committed prior to the legislation intended to make certain the meaning of the statute.

III.

FALSE IMPERSONATION GIST OF OFFENSES CREATED BY SECTION 32.

At pages 21 and 22 of their brief Government counsel apparently missed the real point in the contention made at pages 58-61 of the petitioner's original brief with respect to the overt act necessary to complete either offense denounced by section 32 of the criminal code.

In Baas vs. U. S. 25 F2d 294 (C. C. A. 5), the Court says:

> "Merely falsely pretending to be an officer or employee of the United States with intent to defraud is not enough. An overt act is necessary to complete either offense. U. S. vs. Barnow, 239 U. S. 74, 36 S. Ct. 19, 60 Law Edition 155."

The "*overt act*" need not be a legally authorized act but it must be an act in "keeping with the pretense" (U. S. vs. Barnow 239 U. S. 74, 77), or an act done in the "falsely assumed character". Lamar vs. U. S. 241 U. S. 103.

To constitute an offense under either clause of Section 32, the false claim of federal authority must be accompanied by an "act done in the pretended character" of a federal official (U. S. v. Barnow, supra). And it is not the obtaining of money, but the false impersonation that is the gist of the offense created by the second clause of the statute. Littell v. U. S. 169 Fed. 620 (C. C. A. 9).

The exhibition of papers or the collection of money to constitute "an act in keeping with the pretense" of being a federal official must be an apparent official act, and this is as necessary under the second as under the first clause of Section 32. In Lamar v. U. S., supra., this court said:

> ". . . last clause of the section makes criminal the demanding or obtaining in the *assumed capacity* which the first clause prohibits, 'from any person or from the United States, . . . any money, paper, document, or other valuable thing . . .' We say which the first clause prohibits because there is no re-expression of the prohibition against assuming or

> pretending contained in the first clause, except as that prohibition is carried over and made applicable to the second by the words 'or shall in such pretended character demand', etc."

If the word "pretend" has the meaning ascribed to it by the court in King v. U. S., 279 Fed. 103, to-wit, "the putting forward of a false appearance of being officers", then there was no act on the part of petitioner in "keeping with the pretense". Whatever may be the conclusion as to whether petitioner claimed to be a representative of the Government or the TVA, there can be no doubt that he introduced himself as the editor and publisher of a newspaper, nor that the receipt then and there given for money paid to him was a receipt of the newspaper, signed by him as its editor, and not a pretended official receipt. Filling out a check, payable to this newspaper, not to any agency or representative of the Government, to be signed by the subscriber, and presenting it for such signature was not an act in "keeping with the pretense", if made, of being a Government or a TVA official, but the act of a newspaper representative.

The character of the acts, actually performed by petitioner, seem to have been entirely disregarded by Government counsel in the argument at page 22 of their brief. When the nature of these acts is considered, the evidence discloses nothing more than a verbal declaration of an official relation and not the performance of an apparent official act. This does not constitute a violation of the statute.

CONCLUSION.

A large part of the testimony of government witnesses is so inconsistent with the testimony they admit they gave at a former hearing or so self-contradictory as entirely to destroy its probative value. Johnson v. C. N. O. T. U. P. Ry. Co., 146 Tenn. 135, 157, 158, 240 S. W. 429.

But little, if any of it, presents a consistent, connected or reasonable description of the things said and done by petitioner. In but few instances, if any, does a government witness state either an impression or a conclusion based on the whole tenor of petitioner's utterances and acts in the solicitation of funds from the witness, but in the main the conclusion of each government witness is rooted and grounded in confusion or misunderstanding that resulted from his failure to consider petitioner's words and acts in their entirety.

In contrast to this weak and inconclusive evidence of the Government, petitioner presented direct and positive evidence, including unimpeached written instruments, that established almost to a mathematical certainty that he conducted his campaign as a representative of a newspaper and not as a pretended officer of the United States or the Tennessee Valley Authority.

The work in which he was engaged was his business, not for a day nor a week nor a month but from year to year, and it is inherently improbable that for the small amounts involved in the several counts of the indictment in this case, these aggregating $125, he would have incurred the risk incident to a false impersonation of an officer of the United States, and particularly when his business was being conducted with marked success without the slightest claim or pretense of federal authority.

Further emphasizing that improbability, we bring to the attention of this court an incident that occurred during the canvass of a county adjoining Gibson. One Yancey offered to increase his contribution in the sum of $150.00 if it would be taken into consideration when cheaper power was extended to his county. Upon this indication of confusion as to the work of petitioner, he immediately responded: "Wait a minute, Captain Yancey . . . *You do not understand . . . This is a donation for a publication*" (R. 242, 243).

If this were the only instance where petitioner made such an explanation when the prospect indicated confusion as to the scope and nature of petitioner's work, there might be some basis for the Government's contention (brief, p. 16) that he was making a "self-serving record" but as pointed out in our original brief (p. 17) in every instance where the prospect indicated a confusion as to the nature of his work petitioner promptly and expressly informed that prospect that he was soliciting funds for advertising and had no connection whatever with the Government.

Such evidence as the statement made to Yancey, being made in the general course of petitioner's business, and fairly contemporaneous with the proofs offered to establish fraudulent device and execution, was admissible in behalf of the accused. Wigmore on Evidence, Vol. 3, 3rd Ed., Sec. 1732; Worthington vs. U. S., 64 F2d 936 (C. C. A. 7). Mr. Wigmore has so thoroughly exploded the fallacy of the rule that formerly excluded material evidence in behalf of the accused on the ground that it was self-serving that we will not further discuss the government suggestion that petitioner was making a self-serving record.

It is not reasonably believable that petitioner would have in clear and explicit language explained to Yancey that he was making a "*donation for a publication*", this explanation involving an additional contribution of $150.00, a sum in excess of the total involved in the several counts of the indictment, and then pretend to the indictment witnesses, who made small contributions, that he was acting in the capacity of an officer of the United States.

The record presents a situation where a little group of disgruntled contributors, mainly residents of the same community, demanded a refund of their subscriptions, and, when this was refused, instituted civil suits and a criminal prosecution in the state courts of Tennessee, and thereafter brought their grievances to the attention of the federal authorities.

But prejudiced as they were, no government witness nor anyone else produced any substantial evidence that petitioner assumed to act as an officer of the Government or the Tennessee Valley Authority and we respectfully submit that petitioner, who, as the record shows, has already greatly suffered as a result of this prosecution, should not be deprived of his liberty on the flimsy evidence presented by the Government in this case.

L. E. Gwinn,
Attorney for Petitioner.

FILED
APR 1
CHARLES ELMORE CROPLEY
CLERK

No. ~~833~~ 36

In the Supreme Court of the United States

OCTOBER TERM, 1940

J. E. PIERCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Argument	9
Conclusion	15

CITATIONS

Criminal Code, Sec. 32 (U. S. C., Title 18, Sec. 76)	2

304030—41——1

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 833

J. E. PIERCE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 347–351) is reported in 115 F. (2d) 399.[1]

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 15, 1940 (R. 345–346), and a petition for rehearing (R. 353) was denied Feb-

[1] The opinions of the District Court and of the Circuit Court of Appeals in connection with petitioner's first trial are reported in 13 F. Supp. 301 and 86 F. (2d) 949, respectively.

ruary 4, 1941 (R. 355). The petition for a writ of certiorari was filed March 11, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules, promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether petitioner's motion for a directed verdict was properly overruled.

2. Whether the trial court erred in refusing to give a instruction requested by the petitioner.[2]

STATUTE INVOLVED

Section 32 of the Criminal Code, as in force at the time of the offenses charged in the indictment (U. S. C., Title 18, Sec. 76), provided:

> Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department or any officer of the Government *thereof,* and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department or any officer of the Government *thereof,* any money, paper, docu-

[2] Petitioner also presents but reserves for argument if certiorari is granted the question whether the indictment was sufficient. On this point, see the opinion of the Circuit Court of Appeals on petitioner's appeal from his first conviction, 86 F. (2d) at p. 951.

ment, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both.[3]

STATEMENT

Petitioner and another were indicted in 1935 in the District Court for the Western District of Tennessee on twenty-one counts, twenty of which charged violations of Section 32 of the Criminal Code and one of which charged conspiracy. They were convicted on seventeen of the substantive counts. On appeal to the Circuit Court of Appeals for the Sixth Circuit the judgment of conviction was reversed because of prejudicial misconduct of the prosecutor. *Pierce* v. *United States,* 86 F. (2d) 949. At the second trial petitioner's co-defendant was acquitted and the jury was unable to agree on a verdict as to petitioner (see R. 347).

At the third trial, the one here involved, the petitioner was convicted on fifteen counts of the indictment (R. 12–13). Counts 2, 4, 9, 11, 14, 16, 18, and 20 charged that on various dates between May 21, 1935, and June 11, 1935, the petitioner, with intent to defraud eight named individuals, falsely as-

[3] Section 32 was subsequently amended by the Act of February 28, 1938, c. 37, 52 Stat. 82, which added, after the first italicized word "thereof," the phrase "or under the authority of any corporation owned or controlled by the United States," and after the second italicized word "thereof," the phrase "or any corporation owned or controlled by the United States." U. S. C., Supp. V, Title 18, Sec. 76.

sumed and pretended to be an officer of the United States, to wit, a representative of the Government selling TVA[1] units, and did act as such. Counts 5, 10, 12, 15, 17, 19, and 21 charged that the petitioner, while acting in such pretended character, obtained from seven of the individuals named sums ranging from $10 to $25 (R. 1–11).

Petitioner was sentenced on the fifteen counts as follows: Three years' imprisonment on Counts 2, 4, 5, 9, and 10, to run concurrently; three years' imprisonment on Counts 11, 12, 14, 15, and 16, to run concurrently with each other, but consecutively to the three-year-period on Counts 2, 4, 5, 9, and 10; two years' imprisonment on Counts 17, 18, 19, 20, and 21, to run concurrently with each other, but consecutively to the three-year-period on Counts 11, 12, 14, 15, and 16 (making a total of eight years' imprisonment); and to pay a fine of $250 on each of the fifteen counts (R. 13–14). On appeal, the Circuit Court of Appeals for the Sixth Circuit unanimously affirmed the judgment of conviction (R. 345–351).

The Government's evidence, which consisted principally of the testimony of persons who were solicited by the petitioner, may be summarized in broad outline as follows:

In May, 1935, petitioner contacted one Reau Graves, a garage man in Gibson County, in western Tennessee, and asked him to recommend someone

[1] The initials "TVA" will be used throughout this brief to refer to the Tennessee Valley Authority.

who was well acquainted in the community and knew everybody. When Graves offered his own services, petitioner hired him to act as a guide, stating that he (petitioner) was working for the Government in the interest of the TVA and desired to call on the better class of farmers. Graves accompanied petitioner for two days, calling on about a dozen persons a day and answering petitioner's questions about each prospect before the call (R. 37–40).

Most of the Government witnesses testified that petitioner would greet them cordially, complimenting them on their farms or residences (R. 24–25, 38, 43, 66, 73, 108, 116, 120), and then inform them that he was representing the Federal government selling TVA "Units" at $10 each, the purpose being to raise money in the various counties in order to bring power lines into their territory, thereby resulting in cheaper electric power for those counties. The money was to be raised by subscriptions of citizens for these TVA "Units", and petitioner stated that each subscription would be matched "dollar for dollar" by the Government (R. 24–25, 43–44, 52, 59, 66, 73–74, 84, 91–92, 101–102, 107–109, 116, 120–121, 131–132). Most of the witnesses testified that petitioner told them he was representing the Government in the interests of the TVA, selling "Units" (R. 32–33, 43, 47–48, 73, 91, 101, 108, 113, 116, 118, 131), while some stated that he informed them he was representing the TVA (R. 59, 72, 84, 123, 127). However, it is apparent from their

testimony that all of the witnesses were led to believe that petitioner was a bona fide Government official authorized to sell "stock" of that agency. Most of the persons approached, because of their proximity to TVA operations, were interested in TVA and the extension to their community, through it, of the benefits of cheap power (R. 25, 43–44, 47, 52, 66, 78, 84, 108, 120), and were therefore easily persuaded to purchase one or more "Units" at $10 each (R. 24–26, 44, 52, 60, 66, 74, 84, 92, 102, 109, 121, 132). There was testimony that some of those solicited were told that they could not delay in making their payments because petitioner had to send the money and a daily report to Washington every night (R. 25, 61, 132).

Several witnesses said that petitioner told them he was well acquainted with President Roosevelt and had gone to school and grown up with him (R. 27, 31, 74, 110, 117, 131). Petitioner had with him a letter of introduction signed by the president of the Huntsville, Alabama, Daily Register (R. 35–36), a newspaper of which petitioner was vice president and editor (R. 35, 135). One witness testified that petitioner handed him this letter and stated that it was a credential identifying him as a Government representative (R. 81–83); while two witnesses testified that petitioner, without showing it to them, read excerpts from the letter and stated or intimated that it was a letter of introduction signed by President Roosevelt (R. 34–45, 131–133).

While some of the purchasers paid cash for "Units" which they bought from petitioner (R. 38, 44, 60, 84), the majority paid by check. Petitioner had blank checks of various local banks (R. 38) and the procedure obtaining in practically all cases was that when a prospect agreed to buy, petitioner would produce a check of the proper bank, fill it in, and the purchaser, who was either busy at the time or trusted in his belief that the petitioner was a Government official, would sign it without noticing to whom it was made payable (R. 52–53, 66–68, 74–75, 92–93, 98–99, 100–103, 109, 121, 129, 132).[5] While the checks in those cases bore on their face the words "For advertising" in petitioner's handwriting, three of the witnesses stated positively that those words were not on the checks when they signed them (R. 67, 92–93, 122). The purchasers were also given receipts which were usually folded when handed to them by petitioner and which were not read by the purchasers until later (R. 45, 53, 60, 68, 73, 75, 84, 93, 102, 109, 122, 132). When the receipts were finally read by the purchasers, after the petitioner had left, they saw that such receipts bore the name of the Daily Register and realized that what they had actually purchased was advertising space in that newspaper (R. 54, 60–61, 68, 73, 75–76, 93, 96, 102–104, 122, 129–130); and some of the witnesses thereupon stopped or attempted

[5] While the record does not show the payees of all the checks, in each instance where the payee is identified such payee was the Huntsville Daily Register (R. 37, 73, 98, 103).

to stop payment of their checks (R. 68, 103, 129–130).

There was also testimony that, during the sales transactions, petitioner had in his possession copies of the Daily Register and other documents which he and his co-defendant displayed and handled in such a manner that the purchasers thought that they dealt with the TVA or that the Register was a TVA publication (R. 40, 56–57, 59, 67–68, 101, 108, 110, 113–115, 125–126). Most of the witnesses received a few copies of the paper after making their purchases (R. 52, 54, 61, 68, 76, 85–86, 94, 122).

None of the witnesses, prior to their payments, understood that they were subscribing to or buying advertising space in a privately owned newspaper (R. 33, 48, 52, 61, 68, 75–76, 85, 94, 102–104, 109, 115, 122, 126, 132).

There was testimony that after making a sale, petitioner would not remain long in the presence of the purchaser (R. 36, 53, 60, 65, 73, 84, 88–89, 102), one witness stating that as soon as petitioner received his $10 he "made a break for the car and that aroused my suspicions," that petitioner "had to run to get in the car * * * and Roach [the co-defendant] had the car started," and that when the witness called to petitioner to give him his address, the petitioner said that it was on the receipt (R. 60–61). Graves, the guide, testified that petitioner would cash checks at various gasoline stations as soon as he received them (R. 38). One Govern-

ment witness, who sought to stop payment of his check, learned that it had been presented to the bank within an hour after he signed it (R. 129–130).

The Assistant Coordinator of the TVA testified that that agency is a corporation but is not a stock company and does not issue any stock or units for sale to the public (R. 89–91); and it was stipulated that petitioner was not at any time an agent, employee, or representative of the Government, any department thereof, or the TVA (R. 91).

ARGUMENT

I

Petitioner contends that the trial court erred in overruling his motion for a directed verdict. He asserts that the Government's evidence was so uncertain, conjectural, and inconclusive that it did not make out a case for the jury (Pet. 12).

While concededly, because of the two previous trials and the attempt to discredit witnesses by reference to their former testimony, some confusion and contradiction resulted, we submit that the evidence heretofore summarized (*supra* pp. 4–9) fully justified the Circuit Court of Appeals in holding that there was substantial evidence inconsistent with the petitioner's claim of innocence. We think that that court correctly appraised the evidence when it said (R. 348):

> If appellant's witnesses were to be believed, appellant had simply engaged in an exten-

> sive sale of advertising space in a newspaper published in Huntsville, Alabama, for the purpose of promoting, through community cooperation, as appellant put it, rural development of counties whose residents purchased advertising, and appellant was not responsible for the contrary impressions of the government's witnesses. On the other hand, if the government's witnesses were to be believed, appellant had capitalized upon his prospects' natural interest in the objectives of the Tennessee Valley Authority by leading them to believe he, as representative of the United States Government, was raising money from private individuals to be matched by government contributions for the purpose of hastening development of the Tennessee Valley Authority and insuring extension of its benefits to their respective communities.

With reference to petitioner's criticism that Government witnesses were unable to state with precision the words and actions of the petitioner which were relied upon to establish his impersonation of a Federal officer (Pet. 12–13, 27), it suffices to say, as the Circuit Court of Appeals pointed out, that a witness who, after a lapse of four years, could recount all of the details surrounding an event "would be either a genius or unworthy of belief" (R. 349).

Petitioner asserts that the Government's evidence showed no more than mere verbal declarations by petitioner that he was a Federal officer,

and that this was not enough under the statute (Pet. 32–35). It is apparent, however, from the Government's evidence that petitioner not only declared himself to be a Government officer, but took it upon himself to act in that assumed capacity. Of course, as was stated by the court below on petitioner's first appeal (86 F. (2d) at p. 951), it was not necessary, as the petitioner seems to insist (Pet. 35), to constitute a violation of the statute, that there be exhibited some badge or other insignia of Federal office.

We submit, therefore, that the Circuit Court of Appeals correctly held that the petitioner's motion for a directed verdict was properly overruled.

II

The petitioner contends (Pet. 23–26) that the trial court erred in refusing to give the special instruction requested by him set forth at R. 308, to the effect that officers and employees of the TVA were not within the scope of the statutory provisions involved, and therefore that any claim or representation by the petitioner that he was representing the TVA did not constitute a violation of the statute.

It is asserted by the petitioner that it was the theory of the prosecution that the petitioner by representing himself to be an officer or employee of the TVA, without more, violated the statute; that nowhere in its charge did the trial court point

out that it was not sufficient, to constitute an infringement of the statute prior to its amendment (*supra*, pp. 2–3), for the petitioner merely to have falsely assumed to act as an officer or employee of the TVA; and that no distinction having been made in the charge between impersonating an officer of the TVA and the impersonation of Government officers, the jury was permitted to find the petitioner guilty on evidence which went no further than to show that petitioner claimed to represent the TVA.

Preliminarily, it should be pointed out that, contrary to petitioner's repeated assertions, the Government's case was not based upon the theory that officers and employees of the TVA are officers and employees of the Government and that petitioner violated the statute merely because he pretended to be an officer or employee of the TVA. Each count of the indictment (R. 1–11) charged the petitioner with having assumed and pretended to be an officer of the United States, to wit, a representative of the Government selling TVA Units. And the evidence heretofore summarized (*supra*, pp. 4–9) abundantly established that the petitioner, by words and acts, held himself out as "an officer acting under the authority of the United States Government."[8] There is consequently no occasion

[8] The trial court, in summarizing in its charge, the case on behalf of the Government said (R. 304):

> The Government alleges that the defendant claimed or represented that he was an officer acting under the au-

to discuss the abstract question, raised by the petitioner, whether the statute prior to its amendment in 1938 applied to the impersonation of officers and employees of the TVA.[7]

With respect to the refusal of petitioner's requested instruction, a perusal of the trial court's charge readily discloses that the court adequately dealt with the proper effect to be given to evidence of claims or representations by the petitioner that he was acting for the TVA. Not only did the court twice read (R. 295, 299–300) the entire statute to the jury—once at the request of the petitioner—and repeatedly caution the jury that it could not find the petitioner guilty unless the evidence established beyond a reasonable doubt that petitioner impersonated a Federal officer (R. 301, 302, 303, 304, 305), but it specifically charged that (R. 306):

> In this connection the Court further instructs the jury that reference to the TVA

---

thority of the Government of the United States and as such officer, sold or attempted to sell TVA Units.

[7] In its opinion on the petitioner's appeal from his first conviction, the Circuit Court of Appeals, in disposing of petitioner's legalistic contention that officers and employees of the TVA were not within the purview of the statute prior to its amendment, said (86 F. (2d) at p. 951):

> The allegations of the indictment are broader than the contention implies, and to the allegations the proofs respond. The defendants were not charged with representing themselves as agents or employees of the Tennessee Valley Authority. They are charged with having assumed or pretended to be representatives of the government.

> in copies of the Huntsville Daily Register, exhibited by the defendant to any person, from whom funds were solicited, *and in the sales talks made by him*, to such person should not be considered by you as evidence of a false claim or pretense of Federal Authority on the part of the defendant, Pierce, *unless you further find and are satisfied from the proof, beyond a reasonable doubt, that such reference to TVA, in either the newspapers or sales talks, were made by the defendant with the intent of producing a belief on the part of the person from whom funds were solicited that he, the defendant Pierce, was acting as an officer or employee of the Federal Government.* [Italics ours.]

It is therefore evident that the jury was adequately advised that mere representations by the petitioner that he was acting for the TVA would not alone constitute a violation of the statute; that it was necessary that the jury find in addition that by such representations the petitioner was in fact pretending and assuming to act as an officer of the Government. This was the most to which the petitioner was entitled. Clearly any claim or representation by the petitioner that he represented the TVA was a violation of the statute if he meant thereby to convey and did convey the impression that he was an officer acting under the authority of the Federal Government. The instruction sought by the petitioner was not so qualified and therefore did not adequately state the law. Petitioner was amply

protected by the trial court's charge against being convicted on the basis of any claim or representation by him that did not go so far as to induce the belief that he was acting as an officer of the Government.

CONCLUSION

The case was correctly decided below, there is no conflict of decisions, and there is involved no important question of Federal law. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

FRANCIS BIDDLE,
Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
GEORGE F. KNEIP,
FRED E. STRINE,
W. MARVIN SMITH,
Attorneys.

APRIL 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 17 1941
CHARLES ELMORE CROPLEY
CLERK

No. 36

In the Supreme Court of the United States

OCTOBER TERM, 1941

J. E. PIERCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Summary of argument	10
Argument:	
I. The evidence was sufficient to support the verdict on each of the counts	13
II. The trial court properly refused the instruction requested by the petitioner	22
III. The indictment described the offenses with sufficient certainty	34
Conclusion	35

CITATIONS

Cases:	
Claassen v. *United States*, 142 U. S. 140	21
Clallam County v. *United States*, 263 U. S. 341	28
Delaney v. *United States*, 263 U. S. 586	15
Elliott v. *Hudspeth*, 110 F. (2d) 389	30
Emergency Fleet Corporation v. *Western Union Telegraph Co.*, 275 U. S. 415	28, 31
Evans v. *United States*, 153 U. S. 584	21
Federal Trade Commission v. *Education Society*, 302 U. S. 112	17
Garrison v. *Hudspeth*, 108 F. (2d) 733	34
Heskett v. *United States*, 58 F. (2d) 987, certiorari denied, 287 U. S. 643	34
Keifer & Keifer v. *Reconstruction Finance Corporation*, 97 F. (2) 812	28
King v. *United States*, 279 Fed. 103	34
Lamar v. *United States*, 241 U. S. 103	22, 29, 34
Langer v. *United States*, 76 F. (2d) 817	28
Littell v. *United States*, 169 Fed. 620	26
Pierce v. *United States*, 86 F. (2d) 949	3
United States v. *Ballard*, 118 Fed. 757	26
United States v. *Barnow*, 239 U. S. 74	12, 13, 21, 22, 27, 29, 30, 31
United States ex rel. Skinner & Eddy Corp. v. *McCarl*, 275 U. S. 1	28

Cases—Continued. Page

United States v. *Pierce*, 13 F. Supp. 301 ... 3

United States v. *Skinner & Eddy Corp.*, 28 F. (2d) 373 ... 28

United States v. *Strang*, 254 U. S. 491 ... 28, 31

United States v. *Walter* 263 U. S. 15 ... 28, 31

United States Grain Corp. v. *Phillips*, 261 U. S. 106 ... 28

Statutes:

Criminal Code (U. S. C., Title 18, Sec. 76) Sec. 32, amended by Act of February 28, 1938 (52 Stat. 82) ... 2, 3, 12, 25, 31

Post Roads Act (14 Stat. 221; U. S. C., Title 27, Sec. 3) ... 28

Miscellaneous:

15 Cong. Rec. 2256 ... 26

81 Cong. Rec.:

P. 2252 ... 33

Pp. 2264–2265 ... 33

P. 8378 ... 33

H. Rep. No. 1763 ... 33

S. Rep. 823 ... 33

Lilienthal and Marquis, *The Conduct of Business Enterprises by the Federal Government*, 54 Harv. L. Rev. 545 (1941) ... 28

Pinney, *The Legal Status of Federal Government Corporations*, 27 Col. L. Rev. 712 (1939) ... 28

4 Oberholtzer, *A History of the United States since the Civil War*, vol. IV, p. 354 ... 26

Stoke, *Some Aspects of the Legal Status of Federal Corporations*, 27 Geo. L. J. 1 (1938) ... 28

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 36

J. E. PIERCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 345–349) is reported at 115 F. (2d) 399.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 15, 1940 (R. 345), and a petition for rehearing was denied February 4, 1941 (R. 349). The petition for a writ of certiorari was filed March 11, 1941, and was granted April 14, 1941. The jurisdiction of this Court is conferred under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also

Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict on each count.

2. Whether it was reversible error for the trial court to have refused petitioner's requested instruction to the effect that falsely pretending to be an officer or employee of the Tennessee Valley Authority would in no circumstances constitute a false impersonation of an officer or employee of the United States or of a department thereof prohibited by Section 32 of the Criminal Code as it stood in 1935.

3. A question raised by petitioner but not argued in its brief is whether the indictment sufficiently charges the offenses for which petitioner was convicted.

STATUTE INVOLVED

In 1935, when the offenses alleged in the indictment occurred, Section 32 of the Criminal Code (U. S. C., Title 18, Section 76) provided:

> Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the

> United States, or any department or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than $1,000 or imprisoned not more than three years, or both.

By an Act of February 28, 1938 (52 Stat. 82), the Section was amended by the addition of the phrase "or under the authority of any corporation owned or controlled by the United States" after the words "Government thereof" at the two places in which they appeared.

STATEMENT

Petitioner and one Roach were indicted in 1935 in the District Court for the Western District of Tennessee on twenty-one counts, twenty of which charged violations of Section 32 of the Criminal Code and one of which charged conspiracy to violate that Section. Both were convicted on seventeen of the substantive counts. A motion for a new trial was denied. *United States* v. *Pierce*, 13 F. Supp. 301. The judgment was reversed by the Circuit Court of Appeals for the Sixth Circuit on the ground that misconduct of the prosecutor had prejudiced the petitioner. *Pierce* v. *United States*, 86 F. (2d) 949. At the second trial Roach was acquitted, and the jury was unable to agree as to the petitioner.

At the third trial petitioner was convicted on fifteen of the counts (R. 11–13). Eight of these (2, 4, 9, 11, 14, 16, 18, and 20) alleged that during

May and June 1935 the petitioner and Roach, with intent to defraud eight named individuals, did "falsely assume and pretend to be officers of the United States, to-wit, representatives of the Government selling T. V. A. Units, and * * * did * * * take upon themselves to act as such officers." The remaining seven counts (5, 10, 12, 15, 17, 19, and 21) charged that the petitioner and Roach, while falsely pretending to be such officers, obtained from seven of these individuals sums ranging from $10 to $25 (R. 1–11).

The fifteen counts were divided into groups of five for purposes of the sentence (R. 13–14). A sentence of three years' imprisonment was imposed upon each of counts 2, 4, 5, 9, and 10, to run concurrently. A sentence of three years' imprisonment likewise was imposed on each of counts 11, 12, 14, 15, and 16, to run concurrently with each other, but consecutively to the sentence on the first group of counts. A sentence of two years' imprisonment was imposed on each of counts 17, 18, 19, 20, and 21, to run concurrently with each other, but consecutively to the other sentences, thus making a total period of eight years' imprisonment. In addition, a fine of $250 was imposed upon each of the fifteen counts (R. 13–14). On appeal, the Circuit Court of Appeals for the Sixth Circuit affirmed the judgment (R. 349).

The Government's proof at the trial consisted of the testimony of the eight persons named in the indictment who had been approached by petitioner,

as well as that of ten other persons who had heard the petitioner's "sales talk" on one or more occasions. The petitioner took the stand himself, and called sixteen other witnesses who had heard his conversations with prospects at or about the times specified in the indictment. The testimony was conflicting, and, as would be expected, the witnesses, for the most part, could not always recount with positiveness the precise words used by the petitioner in 1935. But there was substantial evidence showing the following facts:

The transactions covered by the indictment occurred in Gibson County, in Western Tennessee, during May and June of 1935, when petitioner was the editor and vice president of the Huntsville (Alabama) Daily Register (R. 135).[1] They occurred in the course of a "community publicity advertising" compaign which the petitioner had been conducting since 1933 in Alabama, Mississippi, and Tennessee, and which he had resumed in Arkansas by the time of the third trial in 1939 (R. 139, 155–156, 257).[2]

Upon entering a new county, petitioner would hire a resident of the locality as a guide and as a

[1] The Huntsville Daily Register was a small newspaper, organized in 1931. All of the common stock and some of the preferred stock of Register Publishing Company were owned by the petitioner and his family (R. 171). No one else attended stockholders' meetings (R. 172).

[2] Roach, who was acquitted at the second trial, began to assist the petitioner in August 1934, and was working for him again in Arkansas in 1939 (R. 258, 267).

source of information concerning persons whom he might wish to approach (R. 152, 166–167, 217, 222, 223, 227, 235, 250, 257, 259, 260). In Gibson County he hired first R. E. Ross and then Reau Graves for this purpose (R. 37, 215, 260, 262). Armed with the data supplied by his guides, the petitioner would greet his prospects by their first or nicknames, and compliment them on their farms and homes (R. 24, 38, 43, 66, 73, 84, 91, 101, 108, 112, 116, 131, 255, 278–279). Speaking very hurriedly (R. 27, 70, 73, 110–111), he would then launch into a sales talk which was substantially the same on the occasions involved (R. 244, 252, 259, 268, 269, 279–280). He would say that he was representing the "Government" or the "Federal Government" (R. 38–40, 43–44, 47–48, 50, 73, 76, 78, 81, 91, 96, 101, 106–107, 108, 113, 116, 118, 131) or, in a few instances, "the TVA" or it and the "Government" (R. 31–33, 43, 59, 72, 84, 120–121), and that he was selling "TVA units" at $10 each (R. 44, 48, 52, 58, 59, 66, 76–77, 82, 84, 91, 96, 101, 102, 104, 106–107, 112, 113, 121, 131. See R. 25–26, 38.). The exact nature of these "TVA units" was not disclosed, but petitioner indicated that if enough of them were sold the advent of cheap electric power would be hastened (R. 24, 31, 32, 38, 44, 52, 58, 59, 66, 73, 74, 81, 92, 108, 112, 114, 116, 118, 120). He explained that the Government would match, dollar for dollar, the contributions which the citizens of the county made (R. 24, 27, 31, 44, 54–55, 59, 66, 69, 74, 77, 81, 107, 116, 120). Sometimes

he would add to the impression that he was a Government representative by remarking that he and President Roosevelt had been schoolmates together and were good friends (R. 24–25, 31, 74, 101, 110, 117, 131). On at least three occasions he stated that he was required to make daily reports to Washington (R. 25, 61, 132).

There had been considerable discussion of the TVA in the region for some time preceding petitioner's arrival (R. 78, 84), and this circumstance combined with the petitioner's representations to produce the impression that he was an advance Government official preparing the way for the speedy extension of TVA power to these communities (See R. 47, 70, 78, 84, 98–99, 108, 112, 120–121, 124). Since the residents of the section appear to have been favorably disposed to the project (R. 25, 47, 52, 78, 108, 120–121, 124), many of them were easily persuaded to purchase one or more "TVA units" (R. 26, 44, 52, 60, 66, 74, 84, 92, 102, 109, 121, 132).

Petitioner carried with him a letter signed by his son as President of The Register Publishing Company, publisher of the Huntsville Daily Register (R. 35–36). The letter introduced the petitioner as Editor and Vice President of that newspaper, described his appearance, listed his civic and church affiliations and business activities, and stated that he had been assigned "to the task of completing the Muscle Shoals series of page newspaper advertisements (20 in number) for each group of one or more counties from

the Georgia line to the Mississippi River." In some cases no use was made of this letter (R. 72, 86). In one instance, however, petitioner apparently offered it as a credential of status as a Government representative (R. 81–83); on two occasions he read excerpts from it and said or intimated that it was signed by President Roosevelt (R. 34–35, 131–133). Once, after he had represented himself as a government man, he was asked for his credentials and, instead of producing the letter, answered that he had forgotten to bring them with him (R. 113).

Although a few of the purchasers paid cash for the "TVA units" (R. 38, 44, 60, 84), most of them paid by check. The petitioner carried with him blank checks on the banks of the locality which he would produce at the appropriate time, fill in, and hand to the purchasers for their signatures; this procedure, coupled with their trust in the petitioner as a government official, led many of the purchasers to sign the checks without noticing to whom they were payable (R. 38, 52–53, 66–68, 73, 74–75, 92–93, 98–99, 100–103, 109, 121, 129, 132). At the trial it appeared that the payee of the checks in evidence was the Huntsville Daily Register (R. 37, 73, 98, 103). The checks which were introduced at the trial also bore on their face the words "For Advertising" in petitioner's handwriting, but three of the witnesses stated positively that the words had not been on the checks when they had signed them

(R. 67, 92–93, 122). And none of the Government witnesses understood at the time that they were subscribing to or buying advertising space in a privately owned newspaper (R. 33, 48, 52, 61, 68, 75–76, 85, 94, 102–104, 109, 115, 122, 126, 132).

In the closing minutes of the transactions, the customers would be furnished with receipts which were usually folded by the petitioner and not read by the purchasers until later (R. 45, 53, 60, 68, 73, 75, 84, 93, 102, 109, 122, 132). When they were finally unfolded and read by the purchasers, the receipts were found to bear the name of the Register and to indicate that the money had been paid for advertising space in that newspaper (R. 54, 60–61, 68, 73, 75–76, 93, 96, 102–104, 122, 129–130). The petitioner would depart very swiftly after receiving his money (R. 36, 53, 60–61, 65, 73, 84, 88, 93, 103, 248–249, 253), and would cash the checks promptly (R. 130, 253, 270). When some of the witnesses discovered that their receipts were for advertising, they stopped or attempted to stop payment of their checks (R. 68, 103, 129–130). One such witness learned that his check had been presented to the bank and cashed within an hour after he had signed it (R. 129–130).

The Assistant Coordinator of the TVA testified that that agency is a government corporation and that it is not a stock company and does not issue any stock or units for sale to the public (R. 89–

91). It was stipulated that petitioner was not at any time an agent, employee, or representative of the government, any department thereof, or the TVA (R. 91).

At the conclusion of all the evidence the petitioner made a motion for a directed verdict (R. 291–293). The motion was overruled (R. 293). Thereafter the trial court refused petitioner's requested instruction to the effect that the TVA is a corporate entity separate and distinct from the Government and that, therefore, if the petitioner falsely impersonated an officer or employee of the TVA, it would not constitute a violation of the statute (R. 308).

SUMMARY OF ARGUMENT

I

Petitioner contends that there was no substantial evidence that he was guilty on any of the counts and that therefore the trial court erred in denying his motion for a directed verdict. The court below overruled this contention and it is clear that there was ample evidence to go to the jury.

With respect to nine counts petitioner asserts that, in any event, the evidence showed no more than that he had impersonated an officer or employee of the TVA, and he contends that such an impersonation does not fall within the prohibition of Section 32 because the TVA is a corporation separate and distinct from the Government and its

departments. It is true that the evidence on six or, at most, nine of the counts establishes that petitioner stated that he represented "the TVA," not "the Government," but in the circumstances this was immaterial, as we show under Point II. Moreover, even if the verdict on each of those six or nine counts were invalid, the judgment would stand except as to the fines imposed on those counts. The sentence of imprisonment would be adequately supported by the verdicts on the remaining counts, which were proved by evidence that petitioner had stated that he represented "the Government."

Petitioner suggests that the evidence on all of the counts was insufficient in that it showed no colorable official act accompanying his oral representations and hence did not meet the statutory requirement that the false pretender "take upon himself to act" as the officer or employee impersonated. This point has no relevance to the seven counts charging that petitioner committed the second of the two offenses condemned by the statute, namely the obtaining of money, since the requirement above mentioned is not an element of that offense. As to the eight other counts, the point is untenable for the reason that the testimony showing petitioner's various actions in selling the "TVA units," including his preparation and handing over of checks for signature and his giving of receipts, establish that the statutory requirement was satisfied.

II

Petitioner contends that it was reversible error for the trial court to have refused his requested instruction to the effect that the TVA was not the Government or a department of it, but a corporation, and that petitioner could not have violated Section 32 by impersonating an officer or employee of the TVA.

The refusal of this instruction was correct. The conclusion stated in the instruction was unqualified and to that extent erroneous. Moreover, in view of the court's charge, including his repeated statements to the jury that petitioner, to have violated the statute, must have impersonated an officer or employee of the "Federal Government", it is arguable that the refusal of the requested instruction could not have been prejudicial. As to the counts which were proved by evidence that petitioner had said that he represented "the Government," not the TVA, and to which, therefore, the requested instruction was inapplicable, the refusal clearly could not have been prejudicial. The verdicts on those counts, as shown under Point I, were alone sufficient to support the sentence of imprisonment.

Section 32, construed in the light of its broad purpose to assure a "spirit of respect and goodwill for the Government and its officers" (*United States* v. *Barnow*, 239 U. S. 74, 78), prohibits impersonations which are calculated to create the

false impression that the offenders are officers or employees "acting under the authority of the United States, or any department", whether or not, to an accurately informed person, the offenders would appear to represent merely a government corporation or instrumentality. In the *Barnow* case, *supra*, the Court held that Section 32 was applicable notwithstanding that the office which the defendant had pretended to hold was nonexistent.

The legislative history of the 1938 amendment of Section 32 is consistent with mere uncertainty as to whether impersonating an officer or employee of a government-owned corporation was covered by the statute as it stood prior to the amendment.

III

The question raised by petitioner as to the sufficiency of the indictment is not argued in his brief and it is clear that the offenses were alleged with sufficient certainty and completeness.

ARGUMENT

I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT ON EACH OF THE COUNTS

Petitioner's principal contention is that there is no substantial evidence showing any of the offenses charged and that therefore the trial court should have granted his motion for a directed verdict. This contention is sought to be based

mainly upon the ground (Br. 12–22, 27–41) that the evidence as a whole is without probative force establishing any wrongdoing on petitioner's part and, in any event, is as consistent with innocence as with guilt. In addition, two other grounds are urged or suggested in later portions of petitioner's brief (pp. 42, 44, 58–61). These are, first, that as to nine counts there is not even a scintilla of evidence to support the conviction, since the only evidence against petitioner on those counts was that he impersonated an officer or employee of the TVA, which, even if true, did not fall within the prohibition of the statute; and secondly, that there is no evidence that petitioner performed any colorable official act, without which the statute could not have been violated.

We will discuss these grounds in turn and show that each is untenable.

A. With respect to the first of the foregoing claims, the court below recognized that the testimony of the witnesses called by petitioner conflicted with that of the Government witnesses. But it concluded that there was substantial evidence which was inconsistent with petitioner's alleged innocence and that, therefore, the case properly had gone to the jury (R. 346–347).

In view of this conclusion, it seems unlikely that this Court will entertain any further review of the probative sufficiency of the evidence, except insofar as that question may be presented by the other issues of law raised by petitioner. See *Delaney* v.

United States, 263 U. S. 586, 589–590. Should the Court do so, however, petitioner's cause would not be advanced. For the holding of the court below was clearly correct.

As appears from the Statement (*supra*, pp. 5–9), the testimony of the witnesses called by the Government is directly contrary to petitioner's claim that the record shows no more than that he was a public-spirited newspaper editor engaged in a "community advertising" campaign to the end of securing lower taxes, better roads, and cheaper electric power. And since, especially, the testimony of each closely corresponded with that of the others, it is futile for petitioner to urge that the evidence was insufficient to go to the jury.

The Government witnesses, in contradiction of those called by the defense, were in substantial agreement that, *inter alia*, petitioner had stated to them that he was representing the "Government" or, in some instances, the "TVA", and that the Government would match their contributions; that he had not explained that he was selling advertising in a private newspaper; that his references to advertising were extremely casual and incidental; and that the witnesses had been given to understand that their purchase of "TVA units" were directly related to bringing TVA electric power to their counties. Thus there was ample proof from which the jury could conclude that the purpose and effect of the petitioner's conduct and words was to pro-

duce the impression in the minds of his listeners that he was a representative of the Government seeking contributions from them in order to hasten their enjoyment of the benefits of TVA power.

That the jury was warranted in rejecting petitioner's claim of innocence becomes even clearer upon examination of the facts invoked by him as being proved by substantially undisputed evidence and as being inconsistent with his guilt. These alleged facts include (Br. 28–29) that in dealing with the persons whom he approached he exhibited the letter identifying himself as representing the Register and also exhibited copies of the Register showing community advertisements previously published; that the checks were made payable to the Register or bearer; and that he gave receipts indicating that the payments had been made for subscriptions to or advertising in the Register.

Assuming these occurrences, however, it by no means follows that the jury could not have concluded from other evidence (*supra*, pp. 5–9) that petitioner, on the occasions in question, was guilty of the false impersonations charged. Indeed, the jury would have been justified in regarding the occurrences relied on by petitioner as amounting to nothing more than a self-serving record. The type of person approached by petitioner, the effort to induce the mistaken belief that it would be advantageous to purchase the "T. V. A. units," the misleading character of the exhibition of the old copies of the Register, the creation of a situation

in which the customers would not notice to whom the checks were payable, the addition of the words "for advertising" after the checks had been signed, the folding of the receipts, the sudden departures, and the prompt cashing of the checks all combine to show a calculated imposture.

In such circumstances and in view of the language and purposes of the statute (see *infra*, pp. 25–31), it is unavailing for petitioner to contend (Br. 41) that his customers were gullible in taking him to be a representative of the Government or that they had it within their power to learn that he was not. Whether or not they should have been more intelligent or careful, the statute was violated. Cf. *Federal Trade Commission* v. *Education Society*, 302 U. S. 112, 116–117. Indeed, by its express terms it would have been violated even if petitioner's false impersonation and demands for money had been completely fruitless.

B. In Point II of his brief (pp. 42–58) petitioner, without specifying them, states that some of the counts on which he was convicted are wholly unsupported by evidence unless the false impersonation of a TVA officer or employee is a violation of the statute, which, he urges, it is not. The evidence on each count may be indicated summarily as follows:

Count Two.—Cale Witt, the alleged victim under this count, testified that, among other things, the petitioner had told him that he was selling TVA units and "that every dollar we put in this TVA

unit the Government would match it" (R. 52, 54–55).

Counts Four and Five.—Harris H. Utley, named as the victim in these counts, testified that petitioner had told him that he and Roach represented TVA and that "we" would match the amounts which the citizens of the county put up for TVA units (R. 59).

Counts Nine and Ten.—Clarence E. Luckey, the victim in these counts, testified that the petitioner stated that he was "representing the Government, trying to sell TVA units" and that he and Franklin D. Roosevelt "were boys together" (R. 108, 110).

Counts Eleven and Twelve.—J. H. Simpson, the alleged victim under these counts, testified that petitioner had told him that he was "representing the Government selling TVA," that "the Government will match dollar for dollar that you put in" (R. 73, 74, 76, 78).

Counts Fourteen and Fifteen.—The alleged victim under these counts, Frank Blackman, stated at the trial that the petitioner had told him that he was representing TVA selling TVA units and that the Government would match his contribution dollar for dollar (R. 66, 69, 71).

Counts Sixteen and Seventeen.—Dr. D. J. Conyers, the individual named in these counts, testified that petitioner had told him that he was representing TVA, selling TVA units, and that the

TVA would match any funds which the people of the community would contribute (R. 120–124).

Counts Eighteen and Nineteen.—The person allegedly defrauded under these counts was Carl Robinson. His testimony was that the petitioner had told him that "he was representing the TVA and wanted to sell me units in the TVA" (R. 84).

Counts Twenty and Twenty-One.—J. B. Cherry, the asserted victim under these counts, testified that the petitioner had told him that "he was representing the Federal Government; selling TVA units" (R. 96).

From the foregoing it appears that with respect to at least six of the fifteen counts upon which the petitioner was convicted (9, 10, 11, 12, 20, and 21) the proof showed that the petitioner had explicitly declared that he was a representative of the Government. The testimony of witnesses who were allegedly defrauded, according to three other counts (2, 14, and 15), was that the petitioner had told them that he was selling TVA units and that the Government would match their contributions. Although the testimony of the three who, according to the remaining counts (4, 5, 16, 17, 18, and 19) were victimized by the petitioner, does not reveal that he made specific mention of "the United States" or "the Government," as distinct from the TVA, we think that the total effect of their stories at the trial was that the petitioner, designedly had led them to believe that he was a

Government man. (See R. 59, 61, 84, 120–121, 124. Cf. R. 70–71.) If this be so, the verdict on these counts also is valid, since, as we will show in Point II (*infra*, pp. 22–34), the statute, properly construed, prohibits any false impersonation calculated to produce, or having the reasonably to be anticipated effect of producing the impression that the pretender is an officer or employee of the Government or of a department thereof, whether or not such an officer or employee was in fact impersonated.

Moreover, even if the Court should hold that the verdict was unsupported as to the six or even the nine counts last specified, and should modify the judgment by eliminating the fines imposed upon those counts, the sentence of imprisonment would not be affected. For each of the three groups into which the trial court divided the counts for purposes of the sentence of imprisonment contain two of the six counts (9, 10, 11, 12, 20, 21) upon which the verdict would remain valid.[3] Where a sentence is supported by a valid

[3] The first sentence of three years' imprisonment was imposed upon counts 2, 4, 5, 9 and 10 (R. 13). Of these counts, Nos. 9 and 10 are clearly proved by evidence that petitioner claimed to be representing "the Government." The next sentence of three years' imprisonment was imposed on counts 11, 12, 14, 15, and 16 (R. 13). Of these, Nos. 11 and 12 are similarly established. The remaining sentence, which was for two years, was imposed on counts 17, 18, 19, 20, and 21 (R. 13). Of these, Nos. 20 and 21 likewise were proved by direct evidence. Thus, the entire sentence of eight years' imprisonment would remain valid.

verdict of guilty upon any one of a number of counts, it is to be upheld notwithstanding that the verdict on the other counts was erroneous. *Claassen* v. *United States*, 142 U. S. 140; *Evans* v. *United States*, 153 U. S. 584, 608.

C. In Point III of his brief (pp. 58–61) the petitioner apparently argues, in substance, that the evidence goes no further than to show oral impersonation unaccompanied by any colorable official act and that, consequently, it failed to establish an offense under the language of the statute requiring that the offender "shall take upon himself to act" as an officer or employee of the United States or any department thereof. Whatever its merits, this contention relates only to counts 2, 4, 9, 11, 14, 16, 18 and 20, since only those rest upon the provision of the statute requiring that the offender "take upon himself to act" in a false capacity. The seven other counts charge the second of the two offenses defined by the statute, namely, the obtaining of money. See *United States* v. *Barnow*, 239 U. S. 74, 75.

Furthermore, the contention is without merit even as to the counts to which it relates. The Circuit Court of Appeals at the time of the first appeal disposed of the contention with the observation that "no logical reason is suggested why verbal declarations may not constitute a false pretending or impersonation equally with the exhibition of a counterfeited badge or a false certificate of authority." 86 F. (2d) 949, 951. Petitioner again

stresses the fact that he did not exhibit a badge of office (R. 60–61). However, neither the statute nor any decision under it makes such an exhibition an essential element of the offense. The decisions of this Court in *United States* v. *Barnow*, *supra*, and *Lamar* v. *United States*, 241 U. S. 103, recognize only that the statutory provision requires something more than a false oral representation. In the instant case there is much more. The petitioner, in addition to stating that he was a representative of the Government, or of the TVA, went through an elaborate performance consisting of exhibiting the old copies of the Register, producing the blank checks, and filling them in, accepting payment, and folding the receipts and handing them to his customers, all of which was designed to insure the success of his scheme. There can be no doubt that this performance satisfies the requirement of the statute that he "take upon himself to act" in the false capacity.

II

THE TRIAL COURT PROPERLY REFUSED THE INSTRUCTION REQUESTED BY THE PETITIONER

On the first appeal in this case the petitioner attacked the sufficiency of the indictment under Section 32 on the ground that he was accused of having pretended to be a representative of the TVA, and that the TVA was a corporate entity, separate and distinct from the Government of the United States. Although the Circuit Court

reversed the conviction on other grounds, it specifically rejected this contention. Referring to the words in the indictment, "did * * * falsely assume and pretend to be officers of the United States, to wit, representatives of the Government selling TVA Units," the Court remarked: "The allegations of the indictment are broader than the contention implies, and to the allegations the proofs respond. The defendants were not charged with representing themselves as agents or employees of the Tennessee Valley Authority. They are charged with having assumed or pretended to be representatives of the government" (86 F. (2d) 949, at 951). Thus, there was no occasion to consider the question whether the impersonation of an employee or officer of the TVA might come within the prohibition of the statute.

At the conclusion of the third trial, the petitioner requested the court to instruct the jury as follows (R. 308):

> At the request of the defendant, the Court further instructs the jury that the Tennessee Valley Authority, commonly designated as TVA, although an instrumentality of the Federal Government, is a corporate entity, a [sic] separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defend-

> ant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the TVA as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, TVA officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment.

The petitioner contends (Br. 42–53) that the denial of this request was prejudicial error requiring reversal. He argues that an officer or employee of the TVA or any other government corporation is not an officer or employee of the United States or any department thereof, and that therefore, as a matter of law, if he impersonated such an officer or employee, he did not violate Section 32 as it stood prior to the amendment of 1938. We will show that this argument is unsound and hence that the requested instruction properly was refused. The propriety of the refusal seems particularly clear because the requested instruction contained no qualification that if petitioner, in stating that he represented the TVA, meant to convey and did convey the impression that he was an officer or employee of the Government, he could be convicted.

Of course, for reasons already indicated (*supra*, pp. 19–21), petitioner's argument, even if correct,

would not result in a reversal or modification of the sentence of imprisonment, but would at most reach only the fines on the six or nine counts as to which the proof was that petitioner had stated that he was a representative of the TVA, rather than of the Government. With respect to the remaining counts, petitioner could not have been prejudiced by the denial of the requested instruction. Moreover, even as to the others, it might be argued that there was no prejudice in view of what the trial court did charge.[4]

Our more important contention, however, is that Section 32 should be construed in the light of its evident purpose and of the broad scope hitherto accorded it; and that, so construed, it prohibits false impersonations which are calculated to mislead people into believing that the offenders are, in the words of the statute, officers or employees "acting under the authority of the United States, or any department," or which reasonably would be expected to have that effect, whether or not to an accurately informed individual the offender would appear merely as a representative of a government corporation or independent agency.

Section 32 was originally enacted in 1884. 23

---

[4] The court twice read the statute (R. 295, 299–300) and repeatedly cautioned the jury not to find petitioner guilty unless the evidence established beyond a reasonable doubt that he had impersonated an officer or employee of the "United States" or "Federal Government" (R. 300, 301, 302, 303, 304, 305, 306).

Stat. 11. It was a remedial statute, designed to put an end to frauds upon Civil War pension claimants. 15 Cong. Rec. 2256, 2627. The number and variety of frauds of this kind were the source of considerable anxiety at the time. Oberholtzer, *A History of the United States since the Civil War*, Vol. IV, p. 354. There can be little doubt but that the Congress meant the prohibition to be broadly construed to prevent the defeat of its policy by any scheme devised by the nimble wits of schemers. What was true of the pension frauds is true of all such devices today; they are as various in their conception and execution as cunning permits. "It was not possible for congress in enacting the statute [Section 32] to anticipate all the devices and schemes which human knavery might conceive * * *." *United States* v. *Ballard*, 118 Fed. 757, 759 (W. D. Mo. 1902). See *Littell* v. *United States*, 169 Fed. 620 (C. C. A. 9th 1909).

This necessity for according the Section an ample scope is accentuated by the consistent recognition by the courts that its purpose is broader than the mere protection of the credulous. The mischief of the schemes at which the statute is directed lies in the false confidence inspired in the mind of the victim by the impression that the offender is a representative of the Government. But the creation of this impression, determinative as it is of the success of the scheme, is fraught with an evil greater than the immediate fraud, for

its inevitable consequence is to undermine the reputation of the Government and its representatives for honesty and fair dealing. The preservation of public confidence in the Government and its representatives, as this Court has indicated, is the wider and more significant objective of the statute. *United States* v. *Barnow*, 239 U. S. 74, 78.

In this most significant purpose of the Section the key to its proper construction is to be found. For it is plain that the impairment of popular faith in the Government hinges upon the success enjoyed by the perpetrator of the scheme in inducing his victim to believe that he is a Federal official. The test of whether a particular scheme falls within the ambit of the statute is the test of public understanding. That is to say, the question to be asked in each case is whether the conduct and representations of the defendant have been of a kind reasonably calculated to produce the impression in the minds of plain people that he is a "Government man." And, as the Circuit Court of Appeals observed at the time of petitioner's first appeal, in the application of this test, it should be unnecessary to determine that even persons of quick perception and intelligence would likely have been deceived. 86 F. (2d) 949, 952.

These considerations seem to us to point with certainty to the solution of the problem raised by the instant case. The government corporation represents one of the most significant and fre-

quently utilized innovations in the statecraft of our time.[5] The only genuine question raised by this development in connection with Section 32 is whether the government corporation is generally regarded by ordinary men as a part of the government itself. This is not a question for the lawyer;[6] it is an empirical question, and its answer is clear. The TVA, in particular, is regarded as a "public" or "government" enterprise by people generally, and especially by the inhabitants of the region in

---

[5] See Stoke, *Some Aspects of the Legal Status of Federal Corporations*, 27 Geo. L. J. 1 (1938); Pinney, *The Legal Status of Federal Government Corporations*, 27 Col. L. Rev. 712 (1939); Lilienthal and Marquis, *The Conduct of Business Enterprises by the Federal Government*, 54 Harv. L. Rev. 545 (1941).

[6] Legal questions concerning the relationship of a Government corporation to the Government have received varying answers by the courts. These answers have depended upon the particular statute or circumstances under which an amalgamation or a distinction has been urged. Thus, the Fleet Corporation has been considered a department of the Government within the meaning of the Post Roads Act (14 Stat. 221; U. S. C., Title 47, Section 3). *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415. Cf. *United States Grain Corp.* v. *Phillips*, 261 U. S. 106, 111, 113–114; *United States* v. *Walter*, 263 U. S. 15; *Callam County* v. *United States*, 263 U. S. 341; *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 97 F. (2d) 812 (C. C. A. 8); *Langer* v. *United States*, 76 F. (2d) 817 (C. C. A. 8th). But for other purposes or under other statutes, the same Corporation is regarded as separate and distinct from the Government. See *United States* v. *Strang*, 254 U. S. 491; *United States ex. rel. Skinner & Eddy Corp.* v. *McCarl*, 275 U. S. 1; *United States* v. *Skinner & Eddy Corp.*, 28 F. (2d) 373 (W. D. Wash.).

which its influence is most immediate and real (See R. 70–71, 78). Whatever its objectives may be, they have not been confused in the public mind with those of a private enterprise.

This being true, it may hardly be doubted that activities of the kind here proved seriously impair the trust in the United States held by the citizens of Tennessee, and threaten in equal measure the success of the public effort embodied in the TVA. Indeed, the TVA, more than most governmental programs, depends upon the confidence which it inspires in the minds of the inhabitants of the territory which it seeks to serve.

An *a fortiori* decision in point is that of this Court in *United States* v. *Barnow,* 239 U. S. 74. The indictment there alleged that the defendant had falsely pretended to be an employee of the United States, to wit, an agent employed by the Government to sell a certain set of books entitled "Messages and Papers of Presidents." A demurrer to the indictment was sustained below on the theory that Section 32 was applicable only to persons who pretended to hold official positions that actually existed, and that there was no such office as that which the defendant allegedly pretended to hold. However, this Court reversed the judgment, holding that the Section should be accorded "a broader reach," and that it should be deemed no less an offense that "the assumption or pretense is entirely false" (239 U. S. 76, 77). See also *Lamar* v. *United States,* 241 U. S. 103,

114–116; *Elliott* v. *Hudspeth*, 110 F. (2d) 389 (C. C. A. 10th). Surely the TVA is not now to be regarded as any less closely identified with the Government for purposes of Section 32 than was the nonexistent office involved in the *Barnow* case.

Another applicable decision of this Court is that in *United States* v. *Walter*, 263 U. S. 15, 18. One count of the indictment there involved charged that the defendant had violated Section 37 of the Criminal Code, punishing conspiracies "to defraud the United States in any manner," in that he had conspired to obtain the payment of fraudulent claims against the United States Emergency Fleet Corporation. The defendant's demurrer on the ground, *inter alia*, that the fraud alleged was not a fraud upon the United States, was sustained by the district court. However, this Court reversed the judgment. Citing the *Barnow* case, the Court said (at page 18, per Mr. Justice Holmes):

> As to the third count, while it is true that the corporation is not the United States, *United States* v. *Strang*, 254 U. S. 491, the contemplated fraud upon the corporation if successful would have resulted directly in a pecuniary loss to the United States, and even more immediately would have impaired the efficiency of its very important instrument. We are of opinion that it was within the words of § 37, "defraud the United States in any manner," and that on this as on the other point the decision below was wrong. *Haas* v. *Henkel*, 216 U. S.

479, 480. *United States* v. *Barnow*, 239 U. S. 74, 79.

By like reasoning, in the instant case the false representations of petitioner could not but impair the "spirit of respect and good-will for the Government and its officers" which Section 32 was designed to protect. *United States* v. *Barnow*, *supra*, 78.

In *United States* v. *Strang*, 254 U. S. 491, the Court held that an inspector employed by the United States Shipping Board Emergency Fleet Corporation was not an "agent of the United States" within the meaning of Section 41 of the Criminal Code, prohibiting persons from acting as such agents in the transaction of business with firms in which they are members or financially interested. However, the purposes and language of Section 32 are broader than those of Section 41, and, as is clear from the passage above quoted, the decision in the *Strang* case was held inapplicable in the *Walter* case. See also *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, and other cases cited in footnote 6, *supra*, p. 28.

The petitioner emphasizes the fact that in 1938, three years after the date of the acts charged in the indictment, Congress amended Section 32 in such a way as to make explicit its application to impersonations of officers or employees of corporations owned in whole or in part by the Federal Government.

The addition of these references to government corporations, it is argued, reveals a Congressional belief in 1938 that the Congress which enacted the original statute in 1884 intended to exclude from its scope the impersonation of an officer or employee of a government corporation. However, the circumstances surrounding the adoption of the 1938 amendment makes this contention seem somewhat artificial.

Early in 1938, as the result of discussions with officials of the Reconstruction Finance Corporation, the Department of Justice prepared a draft of two proposed amendments to Section 32, including the one later adopted, and submitted the draft to the Speaker of the House and to the Senate Committee on the Judiciary. In the letters transmitting the proposed amendments Acting Attorney General Keenan, stated: "It seems desirable to extend the scope of the act so as to penalize impersonation of officers and employees of Government-owned and Government-controlled corporations." He also recommended that the maximum penalty be raised from three years' imprisonment and a fine of $1,000 to five years' imprisonment and a fine of $5,000. Congressional consideration of the proposals was perfunctory. The bill was introduced in the Senate, referred to the Committee on Judiciary, and reported back without amendment. The Report (S. Rep. No. 823) contained little more than the letter from the Acting Attorney

General. Senator Hatch, when asked to explain the bill, replied: "The letter from the Attorney General which accompanies the report is short and explains the purpose of the proposed legislation. * * * This bill extends the existing law to employees of a Government-owned corporation. That, in brief, is the purpose of the bill." 81 Cong. Rec. 8378. Following this terse explanation, the measure was adopted by the Senate without discussion. *Ibid.*

Thereafter the House passed the bill with an amendment restoring the existing penalties. 83 Cong. Rec. 2252. On the following day the Senate concurred in the House amendment. 83 Cong. Rec. 2264–2265. No discussion was had on either floor and the report of the House Committee on the Judiciary (H. Rept. No. 1763) merely expresses concurrence with the recommendation of the (Acting) Attorney General.

We think that this history of the 1938 amendment is as consistent with uncertainty regarding the scope of Section 32 as it is with any belief that cases such as the instant were not covered. It would be unreal to ascribe to Congress any intent with respect to the 1938 amendment other than the doubt entertained by officials of the Department of Justice. The virtually automatic congressional approval of the bill as drafted by the Department can hardly be said in any real sense to suggest a congressional view as of 1938 that in 1884, when Section 32 was

originally enacted, the Congress intended to exclude from its scope either government corporations in particular or new instruments for the effectuation of governmental purposes generally. The history of the 1938 amendment consequently reveals nothing more than an attempt by an administrative agency to clarify the mandate of the statute.

III

THE INDICTMENT DESCRIBED THE OFFENSES WITH SUFFICIENT CERTAINTY

The indictment (R. 1–14) charges that on or about certain dates the petitioner and Roach with intent to defraud named individuals falsely assumed and pretended "to be officers of the United States, to wit, representatives of the Government selling TVA Units," and, in seven counts, that he obtained specified sums of money from the individuals named. The petitioner has raised, but not argued, the question whether these, together with the other averments, sufficiently describe the offense denounced by either clause of Section 32. That they do is not open to doubt, and petitioner does not now press his contention to the contrary. See *Lamar* v. *United States*, 241 U. S. 103, 116; *Garrison* v. *Hudspeth*, 108 F. (2d) 733 (C. C. A. 10); *King* v. *United States*, 279 Fed. 103 (C. C. A. 5); *Heskett* v. *United States*, 58 F. (2d) 897 (C. C. A. 9), certiorari denied, 287 U. S. 643.

CONCLUSION

For the reasons set out above, it is respectfully submitted that the petitioner was properly convicted and that the decision below should be affirmed.

CHARLES FAHY,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
OSCAR PROVOST,
Special Assistant to the Attorney General.
H. G. INGRAHAM,
Attorney.

OCTOBER 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

SUPREME COURT OF THE UNITED STATES.

No. 36.—October Term, 1941.

J. E. Pierce, Petitioner,
vs.
The United States of America.
} On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[December 8, 1941.]

Mr. Justice Reed delivered the opinion of the Court.

Petitioner was convicted under an indictment charging violation of Section 32 of the Criminal Code. At the time of the alleged offense it read as follows:

"Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any Department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both." 35 Stat. 1095; 18 U. S. C. § 76.

The conviction was affirmed, 115 F. 2d 399, and certiorari granted, 313 U. S. 552, on account of petitioner's heretofore undecided contention of manifest error in the trial court's refusal of an instruction that the statute did not include within its scope false personation of officers or employees of a government corporation, i. e., the Tennessee Valley Authority (TVA).

The section has been upon the statute books since April 18, 1884. 23 Stat. 11. It was passed because of reports to Congress by the Pension Office of fraudulent practices affecting pension claimants. There is nothing in the legislative history which throws any light on the problem posed.[1] Nor do we find any fruitful comments in the various reports preliminary to the enactment of the Criminal Code which adopted the original language without

[1] 15 Cong. Rec. 1285, 2256, 2627, 2676, 48th Cong., 1st Sess.

significant change.[2] Subsequently to the acts forming the basis of the respective counts of the indictment, the section was amended to include pretending to be an officer or employee "of any corporation owned or controlled by the United States." Feb. 28, 1938, c. 37, 52 Stat. 82.

The counts of the indictment which were submitted to the jury charged the defendant with falsely pretending to be an officer "of the United States, to wit, [a representative] of the Government selling T.V.A. Units" then and there taking upon himself to act as such officer with intent to defraud separate individuals named in the counts or with obtaining from the named individuals stated sums of money with intent to defraud. The indictment states crimes under the statute.

On the trial it was stipulated that petitioner was not at any time an agent, employee or representative of the Government or any department thereof or of the TVA. It was shown that TVA was a government corporation and that it issued no stock or units for sale. The evidence further showed petitioner was editor and vice president of a newspaper, the Huntsville (Alabama) Daily Register, and that the representations occurred during "a community publicity advertising" campaign. He carried a letter from his paper introducing and identifying him as engaged in getting out "the Muscle Shoals series of page newspaper advertisements," and carried a bundle of the old issues of the paper as demonstrations of the publicity assistance to be given the TVA. The TVA units were participations in the cost of the page advertisements in the Daily Register, telling of the TVA benefits to the community, which cost the victims of the alleged swindle $10 each. Those who purchased by cash or check received on the spot receipts of the Daily Register signed by petitioner for the advertising cost paid. The wide publicity obtained from the construction of the TVA flood and power project had prepared the way for easy acceptance of the scheme by the credulous. Some subscribers to the units who felt they had been duped by the salesman testified to the circumstances of their fleecing on the occasions specified in the indictment. Their evidence showed to the satisfaction of the

[2] Report of the Special Joint Committee on Revision of the Laws, Sen. Rep. No. 10, 60th Cong., 1st Sess., Part 1, p. 40; Final Report of the Commission to Revise and Codify the Laws of the United States, Vol. 1, p. 101, Vol. 2, p. 1776 (1906); Report of the Commission to Revise and Codify the Criminal Laws of the United States, Sen. Doc. No. 68, 57th Cong., 1st Sess., Part 2, pp. IX and 12, Sec. 37.

jury that Pierce, taking upon himself to act as a government employee, said or gave them the impression that he represented the Government, that the Government was contributing to the cost of the advertising for the development of TVA and that, as one witness phrased it, the purpose was "Just the advancement of TVA in our country." Another witness testified "It never dawned on me that it was a personally owned newspaper."

All the counts included a charge of impersonation of a representative of the United States "selling TVA units." The evidence as to some was that Pierce said he represented TVA; as to others it was that he represented the Government selling TVA or TVA units. In no instance is there testimony that Pierce represented himself as an employee or officer of the United States unconnected with the public enterprise of the TVA at Muscle Shoals. The instructions followed the charges and evidence. They made clear that the charges against Pierce were for false impersonation by assuming to act as an officer or employee of the United States with fraudulent intent and not simply for obtaining money by false pretenses or false claim of stimulating the Tennessee Valley development. The instructions repeated with many variations the thought that Pierce must have actually and intentionally represented himself or assumed to be an officer of the United States, acting under its authority. References were made to TVA. It was said defendant was selling or attempting to sell TVA units. It was further pointed out that the mention of TVA in the copies of the Daily Register which were exhibited "by the defendant to any person, from whom funds were solicited, and in the sales talks made by him, to such person should not be considered by you as evidence of a false claim or pretense of Federal Authority on the part of the defendant, Pierce, unless you further find and are satisfied from the proof, beyond a reasonable doubt, that such reference to TVA, in either the newspapers or sales talks, were made by the defendant with the intent of producing a belief on the part of the person from whom funds were solicited that he, the defendant Pierce, was acting as an officer or employee of the Federal Government."

There was a refusal by the trial court, however, to give the following instruction:

"At the request of the defendant, the Court further instructs the jury that the Tennessee Valley Authority, commonly designated as TVA, although an instrumentality of the Federal Government, is

a corporate entity, a separate and distinct from the Federal Government itself, and the officers and employees of that corporation are not within the scope of the Statute on which the indictment in this case is based. Consequently, any claim or representation by the defendant, if you find that such claim or representation was made, that he was representing the TVA, or was connected with the TVA as an officer or employee, would not constitute the false impersonation of an officer or employee of the United States Government or any department thereof, TVA officers and employees not being officers and employees of the Federal Government or some department thereof, within the meaning of the Statute which the defendant is alleged to have violated in the several counts of the indictment."

Nor do we find any comparable statement which was given. In this refusal we find material error.

So closely entwined were the TVA and the Government (The United States) in the instructions and the evidence on the various counts that any jury might well have thought a pretense that Pierce was an employee or officer of the TVA violated the statute and have voted for conviction for that reason. This, however, in our view, is incorrect, and constitutes prejudicial error. Cf. *Warszower* v. *United States*, 312 U. S. 342; *Stromberg* v. *California*, 283 U. S. 359; *Nash* v. *United States*, 229 U. S. 373. The statute in effect at the time of the commission of the alleged offenses did not speak of pretenses of acting under authority of corporations owned or controlled by the United States. It was passed in 1884 before the United States owned or controlled corporations operating hotels, boat lines or generating plants. The amendments, subsequent to the occasions fixed by the indictment, extended its scope first to the Home Owners' Loan Corporation, 49 Stat. 298, and later to all corporations owned or controlled by the United States, 52 Stat. 82.[3] These legislative extensions of the scope of the act were in accord with the growing importance of the administrative corporation, but a comparable judicial enlargement of a criminal act by interpre-

[3] The reports of the Judiciary Committee of the Senate and of the House of Representatives bear upon their view of the proper interpretation of the act in its original form. The reports incorporated the following letter:

"OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 7, 1937.

HON. WILLIAM B. BANKHEAD,
The Speaker, House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: The existing law makes it a crime to impersonate any officer or employee of the United States with intent to defraud (Criminal Code, sec. 32; U. S. Code, title 18, sec. 76). It seems desirable to ex-

tation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness. Cf. *Lanzetta* v. *New Jersey*, 306 U. S. 451 and cases cited. While the act should be interpreted "so as . . . to give full effect to its plain terms," *Lamar* v. *United States*, 241 U. S. 103, 112; *United States* v. *Barnow*, 239 U. S. 74, we should not depart from its words and context. Another section of the Criminal Code (§ 35) was amended to meet the new development by the Act of October 23, 1918, 40 Stat. 1015. Cf. *United States* v. *Strang*, 254 U. S. 491. The TVA Act made certain federal penal statutes applicable to the Authority but pointedly omitted Section 32.[4] This pointed omission is indicative of intention.

Previous cases as to identity between the Government and its corporations turned on considerations not here applicable. In *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 426, the Corporation was held a department of the Government within the meaning of the Post Roads Act and so entitled to lower telegraph rates than private corporations. An indictment under Criminal Code Section 37 for a conspiracy to defraud the United States "in any manner"

---

tend the scope of the act so as to penalize impersonation of officers and employees of Government-owned and Government-controlled corporations.

The maximum penalty that may now be imposed for the offense of impersonation is imprisonment for a term of 3 years and a fine of $1,000. In aggravated cases a greater punishment may prove suitable, and I suggest increasing the maximum penalty to imprisonment for 5 years and a fine of $5,000.

A bill to effectuate this purpose is submitted herewith.

Sincerely yours,

JOSEPH B. KEENAN,
Acting Attorney General."

H. Rep. No. 1763, 75th Cong., 3d Sess.; S. Rep. No. 823, 75th Cong., 1st Sess.

[4] May 18, 1933, c. 32, § 21, 48 Stat. 68:

"(a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the Corporation and to moneys and properties of the United States intrusted to the Corporation.

(b) Any person who, with intent to defraud the Corporation, or to deceive any director, officer, or employee of the Corporation or any officer or employee of the United States (1) makes any false entry in any book of the Corporation, or (2) makes any false report or statement for the Corporation, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion, or agreement, express or implied, with intent to defraud the Corporation or wrongfully and unlawfully to defeat its purposes, shall, on conviction thereof, be fined not more than $5,000 or imprisoned not more than five years, or both."

was held to state a crime when the contemplated fraud was upon the United States Emergency Fleet Corporation. *United States* v. *Walter*, 263 U. S. 15, 17. But this decision is bottomed on the broad ground that fraud which interferes with the successful operation of the Government is within the statute. *Haas* v. *Henkel*, 216 U. S. 462, 479, 480. On the other hand, in *United States* v. *Strang*, *supra*, in construing Criminal Code Section 41[5] this Court held an employee of the Fleet Corporation was not an agent of the United States within the true intendment of the section. The *Strang* case had the approval of the Court in the opinion deciding the *Walter* case. The statute in the *Strang* case points directly at a particular class of persons as the object of the sanction. It leaves, as does the statute here, no room for enlargement of its meaning.

Reversed.

Mr. Justice DOUGLAS dissents on the ground that a false representation by the defendant that he was acting for the Tennessee Valley Authority constituted a false pretense that he was an officer or employee acting under the authority of the United States or a department thereof, within the meaning of § 32 of the Criminal Code.

Mr. Justice BLACK and Mr. Justice JACKSON took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

5 "Sec. 41. No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years." 35 Stat. 1095; 18 U. S. C. § 93.